Supreme Court, U. S.
FILED
JUN 7 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1840

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER, JR.,
Appellants,

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS III, Assistant Attorney General of the United States,
Appellees.

On Appeal From the United States District Court for the District of Columbia

JURISDICTIONAL STATEMENT

ROBERT M. BRINSON
City Attorney of Rome, Georgia
Brinson, Askew & Berry
200 North Fifth Avenue
Rome, Georgia 30161
(404) 291-8853

WILLIAM E. SUMNER
BURTON B. GOLDSTEIN, JR.
Long, Aldridge, Heiner,
Stevens & Sumner
1900 Rhodes-Haverty Building
Atlanta, Georgia 30303

JOSEPH W. DORN
Kilpatrick, Cody, Rogers,
McClatchey & Regenstein
2033 K Street, N.W.
Suite 400
Washington, D.C. 20006

Counsel for Appellants

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

Page

OPINIONS BELOW 3

JURISDICTION 3

STATUTES INVOLVED 4

QUESTIONS PRESENTED 5

STATEMENT OF THE CASE 5

THE QUESTIONS ARE SUBSTANTIAL 9

CONCLUSION 41

APPENDICES

A. Opinion of the Three-Judge District Court below, *City of Rome, et al.* v. *United States, et al.*, 450 F. Supp. 378 (D.D.C. 1978) 1a

B. Opinion of the Three-Judge District Court below, *City of Rome, et al.* v. *United States, et al.*, CA 77-0797 (D.D.C. April 9, 1979), together with the court's order of April 4, 1979 ..... 1b

C. Section 4 and Section 5 of the Voting Rights Act of 1965, Pub. L. No. 89-110, Title I, §§ 4 and 5, 79 Stat. 438-439, *as amended by* Pub. L. No. 91-285, §§ 3-5 (June 22, 1970), 84 Stat. 315, *as amended by* Pub. L. No. 94-73, §§ 101, 201-203, 204, 206 (Aug. 6, 1975), 89 Stat. 400-402, 404; [codified at 42 U.S.C. §§ 1973b and 1973c (1970)] 1c

D. Georgia Laws 1968, pp. 885, 887, Ga. Code Ann. § 34A-102 (1970); Georgia Laws 1968, pp. 885, 913-914, Ga. Code Ann. § 34A-902 (1970); Georgia Laws 1968, pp. 885, 977-978, Georgia Laws 1970, pp. 341, 344, Ga. Code Ann. § 34A-1407 (1970).. 1d

E. Georgia Laws 1966, pp. 2375-2378, 2382-2386, 2815-2819, 3083-3087; Georgia Laws 1967, pp. 3296-3298; Georgia Laws 1970, pp. 2563-2566; Georgia Laws 1971, pp. 3664-3666 ..... 1e

F. Notice of Appeal 1f

Page

CASES:

Allen v. *State Board of Elections*, 393 U.S. 544 (1969) 16, 24, 27, 30
Arlington Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) 19
Beer v. *United States*, 425 U.S. 130 (1976) 10, 13
Berry v. *Doles*, 438 U.S. 190 (1978) 27, 30, 37, 38
Bolden v. *City of Mobile*, 571 F.2d 238 (5th Cir. 1978), *prob. juris. noted*, 47 U.S.L.W. 3221 (Oct. 3, 1978) (No. 77-1844) 18
Briscoe v. *Bell*, 432 U.S. 404 (1978) 15
Buckley v. *Valeo*, 424 U.S. 1 (1976) 31, 32
Charlton County Board of Education v. *United States*, No. 78-0564 (D.D.C. Nov. 1, 1978) 12
City of Petersburg v. *United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962 (1973) 12
City of Richmond v. *United States*, 422 U.S. 358 (1975) 11, 12
City of Rome v. *Bell*, No. C-76-159R (N.D. Ga. Feb. 24, 1977) 6, 7
City of Rome v. *United States*, 450 F. Supp. 378 (D. D.C. 1978) 3, 7
City of Rome v. *United States*, No. 77-0797 (D.D.C. April 9, 1979) 5, 6, 22, 29, 33, 36, 37
Dallas County v. *Reese*, 421 U.S. 477 (1975) 13, 14
Dawson v. *Vance*, 329 F. Supp. 1320 (S.D. Tex. 1971) .. 25
Dougherty County Board of Education v. *White*, —— U.S. ——, 99 S. Ct. 368 (1978) 15
Dunn v. *Blumstein*, 405 U.S. 330 (1972) 31
Dusch v. *Davis*, 387 U.S. 112 (1967) 13, 14
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 (1976) 38
Elrod v. *Burns*, 427 U.S. 347 (1976) 31, 32
Ex parte Collett, 337 U.S. 55 (1949) 17
Ex parte Siebold, 100 U.S. 371 (1880) 31
Ex parte Virginia, 100 U.S. 339 (1880) 19
Farmer's Loan & Trust Co. v. *United States*, 9 F.2d 688 (S.D.N.Y. 1925) 17
First National Bank v. *Bellotti*, 435 U.S. 765 (1978) ..32, 33
Fitzpatrick v. *Bitzer*, 427 U.S. 445 (1976) 21, 25
Georgia v. *United States*, 411 U.S. 526 (1973) ..26, 28, 39, 40
Gomillion v. *Lightfoot*, 364 U.S. 339 (1960) 18
Harper v. *Virginia Board of Elections*, 383 U.S. 663 (1966) 31

Page

Heikkila v. *Barber*, 345 U.S. 229 (1953) 29
Hutto v. *Finney*, —— U.S. ——, 98 S. Ct. 2565 (1978) 17, 25
Illinois State Board of Elections v. *Socialist Workers Party*, 47 U.S.L.W. 4197 (U.S. Feb. 22, 1979) (No. 77-1248) 31
Katzenbach v. *Morgan*, 384 U.S. 641 (1965) 20, 21
Maryland v. *Environmental Protection Agency*, 530 F.2d 215 (4th Cir. 1975), *Vacated and rem'd per curiam sub nom. Environmental Protection Agency* v. *Brown*, 431 U.S. 99 (1977) 24
Morris v. *Gressette*, 432 U.S. 491 (1977) ..6, 27, 28, 34, 35, 38
National League of Cities v. *Usery*, 426 U.S. 833 (1976) 25, 26
Nevett v. *Sides*, 571 F.2d 209 (5th Cir. 1978), *pet. for cert. filed*, 47 U.S.L.W. 3283 (U.S. Oct. 24, 1978) (No. 78-492) 18, 19
Oregon v. *Mitchell*, 400 U.S. 112 (1970) ...19, 21, 23, 25, 26, 28, 32
Perkins v. *Matthews*, 400 U.S. 379 (1971) 24
Reynolds v. *Sims*, 377 U.S. 533 (1964) 31
Rosario v. *Rockefeller*, 410 U.S. 752 (1973) 33
St. Joseph Stock Yards Co. v. *United States*, 298 U.S. 38 (1936) 29
San Antonio Independent School District v. *Rodriguez*, 411 U.S. 1 (1973) 32
Snyder v. *Massachusetts*, 291 U.S. 97 (1934) 34
South Carolina v. *Katzenbach*, 383 U.S. 301 (1966) ..15, 20, 24
The Slaughter-House Cases, 83 U.S. 36 (1873) 19
United Jewish Organizations v. *Carey*, 430 U.S. 144 (1977) 12, 13, 14
United Public Workers v. *Mitchell*, 330 U.S. 75 (1947) . 35
United States v. *Board of Commissioners of Sheffield*, 435 U.S. 110 (1978) 14, 15, 16, 17, 25, 26, 30
United States v. *Georgia*, 351 F. Supp. 444 (N.D. Ga. 1972), *aff'd mem.*, —— U.S. ——, 98 S. Ct. 2840 (1978) 37
Vollin v. *Kimbel*, 519 F.2d 790 (4th Cir. 1975), *cert. denied*, 423 U.S. 936 (1975) 13
Washington v. *Davis*, 426 U.S. 229 (1976) 19
Wesberry v. *Sanders*, 376 U.S. 1 (1964) 31
Whitcomb v. *Chavis*, 403 U.S. 124 (1971) 12, 13, 14

Page

White v. *Regester*, 412 U.S. 755 (1973) 12, 13, 14
Wise v. *Lipscomb*, —— U.S. ——, 98 S. Ct. 2493 (1978) 38
Wright v. *Rockefeller*, 376 U.S. 52 (1964) 18
Yick Wo v. *Hopkins*, 118 U.S. 356 (1886) 31
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976) 12, 19

UNITED STATES CONSTITUTION:

U.S. CONST. art. IV, § 4 .....23, 25
U.S. CONST. amend. I 23, 29, 34, 35
U.S. CONST. amend. V 29, 34, 35
U.S. CONST. amend. IX 23, 29, 34, 35
U.S. CONST. amend. X 23, 25, 29, 34, 35
U.S. CONST. amend. XIV 25
U.S. CONST. amend. XV .....*passim*

STATUTES:

28 U.S.C. § 1361 (1970) 7
42 U.S.C. § 1973b (1975) .....*passim*
42 U.S.C. § 1973c (1975) .....*passim*
Ga. Code Ann. § 34A-102 (1970) 36
Ga. Code Ann. § 34A-902 (1970) 36
Ga. Code Ann. § 34A-1407 (1970) 36
Ga. Code Ann. § 69-1018 (1976) 5

MISCELLANEOUS:

Brief for United States, *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110 (1978) .. 17
28 C.F.R. §§ 51.3, 51.10(a), 51.18 (1978) 39, 40
Hearings on the Extension of the Voting Rights Act Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives, 94th Cong., 1st Sess., Ser. 1, pt. 1 at 302 .....27, 30

Page

L. Henkin, *Constitutional Rights and Human Rights*, 13 Harv. C.R.-C.L. L. Rev. 593 (1978) 31
Letter from Mr. S. J. Pollak, Assistant Attorney General, to Mr. A. K. Bolton, Attorney General of the State of Georgia (July 15, 1968) (First Request by Plaintiffs for Admissions of Facts and Genuineness of Documents, Exhibit "A", *City of Rome* v. *United States*, No. 77-0797 (D.D.C. April 9, 1979)) 36
Plaintiff's Post-Argument Brief, *City of Rome* v. *United States*, No. 77-0797 (D.D.C. April 9, 1979) 29
Reply Brief for Appellants, *City of Mobile* v. *Bolden*, *prob. juris. noted*, 47 U.S.L.W. 3221 (U.S. Oct. 3, 1978) (No. 77-1844) 18
Report of the Committee on Elections, Texas House of Representatives, 64th Legislature (Nov. 12, 1976) (Second Request by Plaintiffs for Admissions of Facts and Genuineness of Documents, Exhibit "B", *City of Rome* v. *United States*, No. 77-0797 (D.D.C. April 9, 1979)). 22
Report of the House Judiciary Committee on the Voting Rights Act of 1965, H.R. Rep. No. 439, 89th Cong., 1st Sess. 14-15 (June 1, 1965) 15
Second Supplement to Parties' First Stipulation of Facts, Exhibits 38, 39, 41, 45, *City of Rome* v. *United States*, No. 77-0797 (D.D.C. April 9, 1979) .5, 33
Second Supplement to Parties' First Stipulation of Facts, Exhibit 45, *City of Rome* v. *United States*, No. 77-0797 (D.D.C. April 9, 1979) 33
A. Thernstrom, *The Odd Evolution of the Voting Rights Act*, The Public Interest, Spring 1979 at 49 ..... 14, 30
L. Tribe, *A Treatise on American Constitutional Law* 301 (1978) 25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER, JR.,
Appellants,

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS III, Assistant Attorney General of the United States,
Appellees.

On Appeal From the United States District Court for the District of Columbia

---

JURISDICTIONAL STATEMENT

Appellants, the City of Rome, Georgia, Bruce Hamler, and H. F. Hunter, Jr., appeal from the final orders of the United States District Court for the District of Columbia entered on February 22, 1978 and April 4, 1979, and thereby bring to this Court novel and important questions concerning the intended and permissible impact of the Voting Rights Act of 1965 (the "Act"). Specifically, what is the impact of the Act, and the Constitution, upon a political subdivision which is found to be innocent of any discriminatory purpose

in adopting certain voting practices and procedures and certain annexations? Or, put more generally, is a racial quota of electoral success required by the Act, and is such a quota permitted by the Constitution? Though these questions have apparently never been considered by this Court, they are likely to recur with frequency.

Appellants argue that the appropriate resolution of these questions should include a determination that the Act was not intended to affect electoral changes or annexations by a political subdivision innocent of any illegal purpose,[1] or that if such effect were intended by the Congress, a coincident opportunity to avoid that effect was created by the so-called "bailout" mechanism of the statute. Failing both of these proposed intentions of the Congress, the Act exceeds the acknowledged substantive content of the Fifteenth Amendment, or, in the alternative, infringes on the limitations established by the First, Fifth, Ninth and Tenth Amendments and is invalid.

Despite Rome's innocence of purposeful discrimination, and as an inherent result of Section 5 of the Act, no scheduled local elections have been held in the City of Rome since 1974. All of the citizens of Rome

[1] Appellants specifically contend, *inter alia*, that the court below erred in determining that "Congress can be said to have instructed the courts that the existence of racially disproportionate impact raises an irrebuttable presumption of invidious purpose," p. 36b, *infra*. The kafkaesque result of this holding is that although a jurisdiction may disprove, as Rome has, the existence of any invidious purpose, such proof is to no avail because Congress has supposedly said that where disproportionate impact exists purpose *cannot* be disproved.

have thus been denied their rights of political participation.

For these reasons, Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial statutory and constitutional questions are presented.

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia rendered on February 22, 1978, which appears at p. 1a, *infra*, is reported in 450 F. Supp. 378 (D.D.C. 1978). The opinion of that court rendered on April 9, 1979, which appears at p. 1b, *infra*, is presently unreported.

JURISDICTION

This suit was brought by the City of Rome and certain of its citizens, both individually and as city officials, seeking a declaratory judgment pursuant to Section 4 of the Act, 42 U.S.C. 1973b, and Section 5 of the Act, 42 U.S.C. 1973c.

On February 22, 1978, the district court dismissed the portion of Appellants' complaint which contended that the Attorney General of the United States unconstitutionally applied Section 5 of the Act to the City of Rome. 450 F. Supp. 378 (D.D.C. 1978); see p. 13a, *infra*. On April 4, 1979, the court denied Appellants' motion for summary judgment, granted the motion for summary judgment of Appellees with respect to the balance of Appellants' complaint, and dismissed Appellants' case. See p. 1b, *infra*.

A notice of appeal to this Court was duly filed in the United States District Court for the District of Columbia on May 2, 1979. See p. 1f, *infra*.

This appeal is being docketed in this Court within ninety days from the final order of the court below dismissing the case. The jurisdiction of this Court is invoked under 42 U.S.C. § 1973b(a) and 42 U.S.C. § 1973c.

STATUTES INVOLVED

Section 4 and Section 5 of the Voting Rights Act of 1965, Pub. L. No. 89-110, Title I, §§ 4 and 5, 79 Stat. 438-439, *as amended by* Pub. L. No. 91-285, §§ 3-5 (June 22, 1970), 84 Stat. 315, *as amended by* Pub. L. No. 94-73, §§ 101, 201-203, 204, 206 (Aug. 6, 1975), 89 Stat. 400-402, 404 [codified at 42 U.S.C. §§ 1973b and 1973c (1970)], are set forth in full beginning at p. 1c, *infra*. Certain provisions of the Georgia Municipal Election Code, which were precleared by the Attorney General of the United States, GEORGIA LAWS 1968, pp. 885, 887, GA. CODE ANN. § 34A-102 (1970); GEORGIA LAWS 1968, pp. 885, 913-914, GA. CODE ANN. § 34A-902 (1970); GEORGIA LAWS 1968, pp. 885, 977-978, GEORGIA LAWS 1970, pp. 341, 344, GA. CODE ANN. § 34A-1407 (1970), are set forth in full beginning at p. 1d, *infra*. The changes to the Charter of the City of Rome which have been objected to by the Attorney General, GEORGIA LAWS 1966, pp. 2375-2378, 2382-2386, 2815-2819, 3083-3087; GEORGIA LAWS 1967, pp. 3296-3298; GEORGIA LAWS 1970, pp. 2563-2566; GEORGIA LAWS 1971, pp. 3664-3666, are set forth in full beginning at p. 1e, *infra*.

QUESTIONS PRESENTED

1. Whether electoral changes and annexations, enacted without discriminatory purpose, are prohibited by Section 5 of the Voting Rights Act.
2. Whether municipalities located in states covered by the provisions of the Voting Rights Act can independently "bailout" from the coverage of the Act.
3. Whether Congress is empowered, pursuant to Section 2 of the Fifteenth Amendment of the Constitution, to prohibit electoral changes and annexations found to be enacted without discriminatory purpose.
4. Whether Section 5 of the Voting Rights Act intrudes upon basic concepts of Federalism and rights guaranteed by the First, Fifth, Ninth and Tenth Amendments of the Constitution.
5. Whether the Attorney General of the United States "precleared" the electoral changes and annexations presently before the Court.

STATEMENT OF THE CASE

This case arose as a result of the refusal of the Attorney General of the United States to preclear certain changes to the Rome City Charter,[2] including (1) creation of a majority vote requirement for the City

[2] In Georgia, a city charter is a state law of local application. While cities have some home rule powers, changes in electoral processes can only be made by the Georgia General Assembly. Hence, the electoral provisions of which Rome sought preclearance are laws of the State of Georgia. GA. CODE ANN. § 69-1018 (1976). See Second Supplement to Parties Stipulation of Facts, Exhibits 38, 39, 41.

Commission and Board of Education elections, see pp. 2, 7, 11, 16e, *infra*, (2) creation of numbered posts in connection with City Commission and Board of Education elections, see pp. 2, 7, 11e, *infra*, (3) establishment of a ward residency requirement for Board of Education elections, see p. 10e, *infra*, and, (4) institution of staggered terms for the City Commission and Board of Education, see pp. 2, 11e, *infra*. In addition to these changes, the Attorney General objected to thirteen annexations [3] insofar as they related to City Commission elections.

These matters, and others no longer at issue, were submitted to the Attorney General for preclearance on August 21, 1975.[4] An objection was entered on October 20, 1975. On May 24, 1976, Rome requested reconsideration. Rome voluntarily supplemented its request for reconsideration on July 14, 1976. The Attorney General denied the request for reconsideration on August 12, 1976.

On May 9, 1977,[5] Appellants filed this action, seeking a declaratory judgment, pursuant to Sections 4,

[3] Three of the annexations were state-enacted, and ten were local ordinances. Nine of the areas annexed had *no* population at the time of annexation, see p. 52b, *infra*.

[4] The Attorney General did not object to a reduction in the number of wards in Rome from nine to three or to the conduct of runoff elections, and his objections to forty-seven annexations were withdrawn, see pp. 15-16b, *infra*. The court below approved Rome's transfer of voter registration to Floyd County. See p. 15b, *infra*, note 46. With respect to the lapse of time between enactment of the electoral changes and submission to the Attorney General, see note 21 *infra*. Five elections were conducted under the system established by these electoral changes before elections were frozen.

[5] Appellants, prior to the ruling in Morris v. Gressette, 432 U.S. 491 (1977), brought suit against the Attorney General in the United States District Court for the Northern District of Georgia

5 and 14 of the Act, that (1) the prohibitions of Section 5 of the Act are constitutionally limited to cases of purposeful discrimination; (2) Section 5 violates Article IV, Section 4, and the First, Fifth, Ninth and Tenth Amendments to the Constitution; (3) the Attorney General unconstitutionally applied Section 5 to the City of Rome; (4) the City of Rome is entitled to bailout from the coverage of the Act, pursuant to Section 4, because it has not used any test or device during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color; (5) the electoral changes and annexations were precleared by the Attorney General; (6) the electoral changes and annexations did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color; and (7) Appellants were entitled to an award of attorneys fees.

On February 22, 1978, the court below dismissed Count V of Appellants' complaint, which contended that the Attorney General unconstitutionally applied Section 5 of the Act to the City of Rome. 450 F. Supp. 378 (D.D.C. 1978); see p. 13a, *infra*. On April 4, 1979, in an order which was followed on April 9, 1979, by an unreported opinion, the court denied Appellants' motion for summary judgment, granted that of Appellees on Counts I, II, III, IV and VI of Appellants' complaint, and dismissed Appellants' case. See pp. 1-2b, *infra*. (No ruling was made on Count VII, the prayer for attorneys fees.)

pursuant to the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361 (1970). City of Rome v. Bell, No. C76-159R (N.D. Ga. Feb. 24, 1977). Upon dismissal of that case, Appellants sought relief in the District Court for the District of Columbia.

Though refusing the requested relief, the district court found a complete absence of racial discrimination in the political affairs of Rome and a history of black involvement in Rome's political processes: (1) "..o literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past seventeen years," see p. 5b, *infra*; (2) "the City has not employed other barriers to registration with respect to time and place, registration personnel, purging or reregistration," see p. 6b, *infra*; (3) "there have been no other direct barriers to black voting in Rome" and "[i]ndeed whites, including City officials, have encouraged blacks to run for elective posts in Rome," see p. 7b, *infra*; (4) "white elected officials of Rome, together with the white appointed City Manager, are responsive to the needs and interests of the black community," see p. 7b, *infra*; (5) "[t]he City has not discriminated against blacks in the provision of services and has made an effort to upgrade some black neighborhoods," see p. 7b, *infra*; (6) "the City transit department, with a predominantly black ridership, is operated through a continuing City subsidy [a]nd the racial composition of the City workforce approximates that of the population, with a number of blacks employed in skilled or supervisory positions," see pp. 7-8b, *infra*; (7) "[i]n Rome politics, the black community, if it chooses to vote as a group, can probably determine the outcome of many, if not most, contests [and] [t]hus, many white candidates vigorously pursue the support of black voters, see p. 8b, *infra*; (8) "the City has carried its burden of showing that its non-annexation voting changes were not enacted with a discriminatory purpose," see p. 45b, *infra*; and (9) the Appellees conceded "that the

thirteen contested annexations were not effected out of discriminatory purpose," see p. 49b, *infra*.

This Court is the only forum available to Appellants for plenary review of the action of the court below. This fact, the findings made below, and the national significance of the questions raised by these findings argue strongly for a determination by the Court to note probable jurisdiction.

THE QUESTIONS ARE SUBSTANTIAL

This small Georgia city and two of its citizens seek to raise before this Court novel and important statutory and constitutional issues concerning the Act. The political institutions and racial climate of Rome have, as a result of this litigation, come under close scrutiny from the United States District Court for the District of Columbia, and its record in the area of purposeful discrimination has emerged unscathed. Yet, Rome continues to be subject to extraordinary judicial and administrative procedures directed at political subdivisions which have permitted and even condoned purposeful racial discrimination. Rome is not such a political subdivision; it has proven this to the satisfaction of the court below. The major questions presented by this case ask whether Rome and similar political subdivisions should be subject to the provisions of the Act, or whether they should be free to order their own affairs within constitutional limitations.

1. Electoral Changes And Annexations Enacted Without Discriminatory Purpose Are Not Prohibited By Section 5 Of The Act.

Section 5 of the Act provides that, in order to obtain approval by the District Court for the District of Columbia or preclearance by the Attorney General of

electoral changes or annexations, a covered jurisdiction must show that such changes or annexations do "not have the purpose *and* will not have the effect of denying or abridging the right to vote on account of race or color . . . ." See pp. 6-7c, *infra* (emphasis supplied). The statutory language leaves open the question of whether a covered jurisdiction must demonstrate that a proposed change is free of racially discriminatory purpose *and* effect, or whether a showing with respect to either is sufficient. This Court has never clarified this important rule of construction. *Beer* v. *United States*, 425 U.S. 130, 148 n.4 (1976) (MARSHALL, J., dissenting).

Even though the proper construction of Section 5 has never been clearly determined, the court below construed Section 5 to outlaw voting changes discriminatory in effect only because "Congress can be said to have instructed the courts that the existence of racially disproportionate impact raises an irrebuttable presumption of invidious purpose," see p. 36b, *infra*. See also p. 37b, *infra*. Appellants submit that to remain within constitutional limitations, the threshold question must be: Is there "purpose?" If the answer is clearly yes or clearly no, then the examination ends. If the answer is not clear, then "effect" should be examined to determine if it calls for an inference of "purpose." Such a construction is consistent with a proper view of the reach of the Fifteenth Amendment and the power of Congress under Section 2 thereof.[6]

Not only did the court below interpret the content of Section 5 in a manner inconsistent with constitutional limitations, but it also mistakenly held that Appellants

[6] See pp. 18-22, *infra*.

failed to sustain their burden of showing the nondiscriminatory effect of the electoral changes and annexations in question because of the alleged existence of racial bloc voting.[7] From that finding, the court

[7] The court below noted that a statistical demonstration of the existence *vel non* of racial bloc voting in Rome was impossible. In finding its existence, the court relied upon three "strands of evidence," see p. 13b, *infra*. First, while recognizing that the opinion testimony of black witnesses and white witnesses differed regarding the issue of racial bloc voting, the court dismissed the testimony of white witnesses as that of "interested witnesses," see p. 12b, *infra*, relying upon an isolated quotation from City of Richmond v. United States, 422 U.S. 358, 377 (1975), and discounting important *dicta* which resulted in remand of the proceedings. *Id.* at 377.

Second, the court relied upon the unsuccessful campaign for the Board of Education in 1970 by Reverend Clyde Hill, a black candidate, although the court conceded that "Reverend Hill did receive a sizable number of white votes," see p. 12b, *infra*. Reverend Hill received 45% of the votes cast in the run-off election, although only 15% of the registered voters were black. Appellants contend that the Hill campaign not only does not support a finding of racial bloc voting, but, indeed, negates it.

Third, the court related the testimony of Dr. James W. Loewen, a political sociologist, who testified as an expert witness that racial bloc voting existed in Floyd County (not the City of Rome) during the 1968 Democratic United States Senate Primary between Herman Talmadge and Maynard Jackson. This testimony was expressly relied upon notwithstanding the facts that (1) the expert was uncertain of the identity of the incumbent in the Talmadge-Jackson election, although he admitted incumbency was an important consideration; (2) Senator Talmadge had served as a Senator for 12 years at the time of the 1968 election, and Mr. Jackson, now the Mayor of Atlanta, was making his first bid for public office; and (3) the testimony concerned an election for national office that occurred 10 years prior to the decision of the court below.

Appellants strenuously objected to the testimony of Dr. Loewen (Response of Plaintiffs to the Defendants' Motion for Summary Judgment, at 19-22, City of Rome v. United States, No. 77-0797 (D.D.C. April 9, 1979)); nevertheless, the court relied upon it to

concluded that the change from plurality to majority elections and the annexation of certain geographically contiguous areas had a discriminatory effect. However, the court's conclusion fails to follow principles repeatedly established by this Court.

The court below rightly concluded that neither the electoral changes nor the annexations had a discriminatory purpose. It also correctly found that the factors traditionally deemed indicative of the dilution of black voting strength do not exist in Rome. *See White* v. *Regester,* 412 U.S. 755 (1973); *Whitcomb* v. *Chavis,* 403 U.S. 124 (1971); *Zimmer* v. *McKeithen,* 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636 (1976).

---

support an inference of racial bloc voting in Rome as of 1978. Such reliance was clearly inconsistent with the manner in which another three-judge court treated the testimony of the same witness in another Section 5 case. Charlton County Board of Education v. United States, No. 78-0564 (D.D.C. Nov. 1, 1978).

In addition to the foregoing factors, the court cited the failure of any black person to be elected to the City Commission or the Board of Education and the apparent political apathy on the part of black citizens as further support for its finding of discriminatory effect, see pp. 9-10b, *infra*. In so doing, the court ignored the admonitions of this Court that mere failure at the polls is not evidence of the dilution of black voting rights. See, *e.g.*, Whitcomb v. Chavis, 403 U.S. 124, 153 (1971); United Jewish Organizations v. Carey, 430 U.S. 144, 166 (1977).

The court below also concluded that "the annexations in question significantly alter the racial balance in Rome," see p. 53b, *infra*, and that the annexations, thus, had a discriminatory effect. In fact, the annexations changed the proportion of black registered voters from 15.5% to 15.2%. This holding is patently contrary to the observation in City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962 (1973) as to the impact of the Act upon annexations, which observation was expressly approved in City of Richmond v. United States, *supra*, at 368-369 (1975).

Finally, the court noted that "[i]n Rome politics, the black community, if it chooses to vote as a group, can probably determine the outcome of many if not most contests." Even in the face of these findings, the court held: "On the other hand, most black voters would prefer to have a black official representing their interests. Yet there has never been a black elected to political office in the City of Rome." (footnotes omitted) See p. 8b, *infra*.

Implicit in this holding is the proposition that, contrary to the undisputed record here, white officials represent their race and not the electorate as a whole and cannot represent black citizens;[8] however, this Court has ruled differently in *Dallas County* v. *Reese,* 421 U.S. 477 (1975) and *Dusch* v. *Davis,* 387 U.S. 112 (1967). *Accord, Vollin* v. *Kimbel,* 519 F.2d 790, 791 (4th Cir. 1975), *cert. denied,* 423 U.S. 936 (1975). These holdings are consistent with the principle that no minority group has a federal right to elect minority officials "in proportion to its voting potential." *Beer* v. *United States,* 425 U.S. 130, 136 n.8 (1976); *White* v. *Regester, supra* at 765; *Whitcomb* v. *Chavis, supra* at 153.

Clearly, preclearance of Rome's electoral changes has been refused because of an assumption, by the court below, of the existence of racially polarized voting, contrary to *United Jewish Organizations* v. *Carey,* 430 U.S. 144, 166-167 (1977). The necessary result of the court's holding is to require that any change in Rome's electoral system must be structured so as to assure the

---

[8] The court has effectively created, in this regard, still *another* irrebuttable presumption, see p. 10, *infra*, making covered jurisdictions' burden of proof insurmountable.

election of black officials, contrary to *Whitcomb* v. *Chavis, supra* at 149, 153 and *White* v. *Regester, supra* at 765-766.

If the decision of the court below receives the imprimatur of this Court, then the concept of political equality for racial and ethnic groups will have been radically redefined. Indeed, the Voting Rights Act will have "oddly evolved"[9] into a federal guaranty of a right to maximum political effectiveness, or, indeed, a *quota* of political success. The "effect" proscribed by Section 5 will be deemed to be the disproportionate *result* of political processes rather than disproportionate *access* to those processes. *Chavis, Regester, United Jewish Organizations, Dusch* and *Dallas County* will be overruled *sub silentio.*

2. Municipalities Located In States Covered By The Provisions Of The Voting Rights Act Can Independently Bailout From The Coverage Of The Act.

"The issue of whether municipalities in covered states may independently seek to bail-out [sic] is apparently one of first impression." See pp. 18-19b, *infra.* Although the court below acknowledged this fact and conceded the "abstract force" of Appellants' approach, see p. 20b, *infra,* it refused to use abstract "logic as a means of subverting congressional intent," see p. 20b, *infra.* The ruling below was said to be based upon the reasoning of *United States* v. *Board of Commissioners of Sheffield,* 435 U.S. 110 (1978), but the court rejected "any logical inference that might be drawn" from that

[9] A. Thernstrom, *The odd evolution of the Voting Rights Act,* THE PUBLIC INTEREST, Spring 1979, at 49 (hereinafter referred to as "Thernstrom").

case which supports Appellants' position. See 23b, *infra.*

This question is not only novel but also of great legal and practical significance. Resolution of the issue has national importance far beyond the boundaries of the City of Rome, for Section 5 "applies to all entities having power over any aspect of the electoral process within designated jurisdictions," *Sheffield, supra* at 117-135, and even to governmental units with no authority over any electoral process, *Dougherty County Board of Education* v. *White,* —— U.S. ——, 99 S.Ct. 368 (1978). The holding below with respect to bailout, if affirmed, will mean that numerous cities, towns and local boards, which have for many years performed commendably in providing access to their political processes to all citizens, will not have even the opportunity to cleanse themselves of the stigma, frustration and expense of Section 5.[10]

The relevant provision of the Act, 42 U.S.C. §1973b(a), as amended, is set forth at pp. 1-3c, *infra.* The Report of the House Judiciary Committee on the Voting Rights Act of 1965 noted that this provision was designed to provide relief to covered political subdivisions where there has been "no racial discrimination violating the Fifteenth Amendment." The Committee noted further that this "provides assurances that no . . . subdivision will be treated unfairly and that the suppression of tests and devices will be applied only to areas where it is necessary to enforce the

[10] "Bailout" has been recognized as an amelioration of the severity of the Section 5 preclearance requirement, Briscoe v. Bell, 432 U.S. 404 (1978), and thus necessary to the constitutional underpinnings of the Act. *See* South Carolina v. Katzenbach, 383 U.S. 301, 331 (1966).

rights guaranteed under the Fifteenth Amendment." H. R. Rep. No. 439, 89th Cong. 1st Sess. 14-15 (June 1, 1965).

In *Sheffield,* this Court ruled that cities such as Rome, which do not register voters, are nonetheless "political subdivisions" within the meaning of the Act and are subject to its "preclearance" requirements. Since the City of Rome is now subject to Section 5, it must necessarily have available to it the remedies of Section 4, under principles of fundamental fairness, rules of statutory construction, and, most importantly, the language of *Sheffield.*

The language of *Sheffield* seems to be developed, in part, from the comment of Mr. Justice Harlan, concurring in part and dissenting in part, in *Allen* v. *State Board of Elections,* 393 U.S. 544, 584 (1969), that Section 5 "is clearly designed to *march in lock step* with § 4—the two sections cannot be understood apart from one another" (emphasis supplied). True to this "lock step," the City of Rome must now be considered as a "political subdivision" under Section 4(a), as well as Section 5, and be allowed to bailout.

The exhaustive textual and historical analysis in *Sheffield* made no attempt to distinguish the internal aspects of Section 4(a). In fact, it was stated in the context of refuting the district court's position as to the scope of Section 5, that Section 4(a) "clearly applies to all political units within covered jurisdictions . . . ." *Sheffield, supra* at 127 n.14. Mr. Justice Powell concurred in part and observed that Section 5 treats "the governmental units . . . within a designated State or political subdivision as the equivalent of the State or political subdivision." *Id.* at 140.

The opinion in *Sheffield* twice refers to the "textual interrelationship between Section 4(a) and Section 5." *Id.* at 126, 128. The opinion dismisses the slight linguistic differences between Sections 4 and 5 and determines that "the actual terms of Section 5 suggest that its coverage is to be coterminous with Section 4 (a)'s." *Id.* at 126. The Court's opinion does not mention the "bailout sentence" of Section 4(a) specifically, but its exhaustive treatment of the subject compels the conclusion that if any such difference in treatment could rightfully be developed, it would have been set forth. This is especially true in light of the fact that the United States made the Court aware of this position in its *Sheffield* brief. *Brief for the United States* at 25, *United States* v. *Board of Commissioners of Sheffield,* 435 U.S. 110 (1978). *See Farmers' Loan & Trust Co.* v. *United States,* 9 F.2d 688, 689 (S.D.N.Y. 1925).

The importance of a definitive statement from this Court as to the availability of the Section 4(a) bailout remedy to a municipality such as Rome cannot be underestimated. Although the logic of *Sheffield* clearly requires such a remedy, the district court which has exclusive jurisdiction over its availability has rejected this logic in favor of its interpretation of legislative history and congressional intent.[11]

It was established as a matter of fact by the three-judge court below that "no literacy test or other device

[11] The practice of resorting to legislative history in instances in which statutory language is itself clear was expressly rejected by this Court as a canon of construction in Ex parte Collett, 337 U.S. 55, 61 (1949). *See also* Hutto v. Finney, —— U.S. ——, 98 S.Ct. 2565, 2582 (1978) (POWELL, J., and BURGER, C.J., concurring in part and dissenting in part).

has been employed in Rome as a prerequisite to voter registration during the past seventeen years," see p. 5b, *infra*. The City of Rome, and jurisdictions like it, should be entitled to the fair treatment originally intended by the framers of the Act, and in view of the finding by the court below, should be allowed to bailout.

3. Congress Is Not Empowered, Pursuant To Section 2 Of The Fifteenth Amendment Of The Constitution, To Prohibit Electoral Changes And Annexations Found To Be Enacted Without Discriminatory Purpose.

This case raises two fundamental, interrelated constitutional issues of contemporary significance that deserve the attention of this Court. First, does the Fifteenth Amendment proscribe only purposeful discrimination? Second, can the Congress, pursuant to its enforcement powers, proscribe discrimination not prohibited by the substantive terms of the Amendment?

Past decisions of this Court, *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960) and *Wright* v. *Rockefeller*, 376 U.S. 52 (1964), suggest that the Fifteenth Amendment prohibits only intentional racial discrimination, and the United States Court of Appeals for the Fifth Circuit has held directly that "a showing of improper motivation or purpose is necessary to establish a valid cause of action under the fifteenth amendment [sic]." *Nevett* v. *Sides*, 571 F.2d 209, 221 (5th Cir. 1978), *pet. for cert. filed*, 47 U.S.L.W. 3283 (U.S. Oct. 24, 1978) (No. 78-492). (*Nevett* was a companion case to *Bolden* v. *City of Mobile*, 571 F.2d 238 (5th Cir. 1978), *prob. juris. noted*, 47 U.S.L.W. 3221 (U.S. Oct. 3, 1978) (No. 77-1844), which is presently before this Court for decision.[12]) The Fifth Circuit based its decision, in part, upon *Washington* v. *Davis*, 426 U.S. 229 (1976) and *Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), in which this Court established that discriminatory intent is an essential element of a Fourteenth Amendment equal protection claim. Indeed, this Court's historical treatment of the Civil War Amendments indicates that discriminatory intent is a general requirement for such a claim. *See Oregon* v. *Mitchell*, 400 U.S. 112, 126-131 (1970); *Ex parte Virginia*, 100 U.S. 339, 344-345 (1980); *The Slaughter-House Cases*, 83 U.S. 36, 68-72 (1873).

It is essential to the orderly development of doctrine under both the Fourteenth and Fifteenth Amendments that this question be definitively answered. For example, based upon its understanding that discriminatory intent is required for both Fourteenth *and* Fifteenth Amendment claims, the *Nevett* court has characterized the well-known "*Zimmer* standards" for determining the existence of voting dilution, *Zimmer* v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973), *aff'd sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976), as criteria for raising "an inference of intent" necessary in order to sustain a claim under the Fourteenth Amendment, *Nevett, supra* at 217.

Significantly, the three-judge court below, while conceding that discriminatory intent was probably essential to a Fourteenth Amendment claim, nevertheless

---

[12] It is noted, however, that the Appellants in *Mobile* contend, procedurally, that the question of a requirement of purpose under the Fifteenth Amendment is not properly before the Court. Reply Brief for Appellants at 1-2, City of Mobile v. Bolden, *prob. juris. noted*, 47 U.S.L.W. 3221 (U.S. Oct. 3, 1978) (No. 77-1844).

concluded that this Court "has never explicitly addressed the question" of whether the Fifteenth Amendment reaches only purposeful discrimination, see p. 33b, *infra*. This issue was described by Judge McGowan as "an important and unsettled constitutional question." See p. 33b, *infra*.

If the Fifteenth Amendment proscribes only purposeful discrimination, as Appellants believe, the power of Congress to affect the electoral processes of innocent subdivisions is drawn into question. Previous decisions of this Court with respect to the Act cast little light on this issue. In *South Carolina* v. *Katzenbach*, 383 U.S. 301, 324 (1966) this Court upheld the power of Congress to enforce the constitutional prohibition of racial discrimination in voting through the enactment of the Voting Rights Act. The Court's understanding of the term "racial discrimination in voting" is illustrated, however, by the examples given by the Court of abuses which fostered the legislation, including "[g]randfather clauses . . . . procedural hurdles . . . . white primar[ies] . . . . improper challenges . . . . racial gerrymandering . . . . [and] [f]inally discriminatory application of voting tests. . . ." *Id.* at 311, 312 (citations omitted). At another point, the Court characterized the problem as the creation by the covered states of "strategem[s] of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees." *Id.* at 335. Indeed, it was such exceptional conditions which caused the Court to "justify legislative measures not otherwise appropriate." *Id.* at 334.

In *Katzenbach* v. *Morgan*, 384 U.S. 641 (1965), Mr. Justice Brennan suggested that extensive power re-

sides in the Congress to define the substance of the Amendments by remedial legislation—even though that definition is different from the rulings of this Court. *Id.* at 653-656. Mr. Justice Harlan dissented from this position stating that the paramount role of the judicial branch should be recognized, and wrote that, "[w]ere the rule otherwise, Congress would be able to qualify this Court's constitutional decisions under the Fourteenth and Fifteenth Amendments, let alone those under other provisions of the Constitution, by resorting to Congressional power under the Necessary and Proper Clause." *Id.* at 667-668. Justice Harlan's view in various forms, appears to have attracted at least four other members of this Court in the case of *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), in which he restated his earlier position, *id.* at 204-207, and in which Justice Stewart, who was joined by the Chief Justice and Justice Blackmun, wrote a concurring opinion noting and elaborating on his concurrence with Justice Harlan's view. *Id.* at 281. Finally Justice Black, in describing limitations on Congressional authority, stated that "Congress may only 'enforce' the provisions of the Amendments." *Id.* at 128. Thus, *Katzenbach* v. *Morgan* and *Oregon* v. *Mitchell* are in conflict regarding the scope of Congressional authority to enforce the Civil War Amendments, and the fundamental questions raised by this conflict merit clarification by the Court.

A recent decision of this Court outlining the reach of the Fourteenth Amendment casts serious doubt as to the power of Congress to create a more stringent standard for enforcement of a constitutional prohibition than that embodied in the prohibition itself. In *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 (1976) it was

held that Section 5 of the Fourteenth Amendment grants Congress the power to "enforce 'by appropriate legislation' the *substantive provisions* of the Fourteenth Amendment...." (emphasis supplied). Implicit in the *Fitzpatrick* holding is the proposition that Congressional power is limited by the substantive content of the Civil War Amendments. Because the Fifteenth Amendment prohibits only electoral procedures which involve some degree of purposeful discrimination, Congress lacks power under Section 2 of the Amendment to prohibit electoral procedures which are adopted without discriminatory purpose.

The court below held that Congress was within its power to outlaw "voting changes discriminatory in effect only," see p. 34b, *infra,* because they raise an "inference of purpose." See pp. 34-35b, *infra.* The court proceeded to hold that Congress, through the enactment of Section 5, instructed the courts that the existence of racially disproportionate impact raises an "irrebuttable presumption" of invidious purpose. See p. 36b, *infra.* Whether couched in terms of evidentiary rules or constitutional doctrine, the effect of such a ruling is to sanction the prohibition of electoral changes solely on the ground of disproportionate racial impact, and thus to recognize the power of Congress to act beyond the substantive content of the supporting amendment. Appellants respectfully submit such a holding merits plenary review by this Court.

4. Section 5 Of The Voting Rights Act Intrudes Upon Basic Concepts Of Federalism And Rights Guaranteed By The First, Fifth, Ninth And Tenth Amendments Of The Constitution.

Appellants challenge not the Voting Rights Act itself, whose commendable purposes have largely been

realized, but only Section 5 thereof. This is the first case since 1966 in which the constitutionality of Section 5, both facially and as applied, has been placed squarely before this Court, based upon a record which includes samples of actual experience under this controversial provision.[13]

South Carolina v. *Katzenbach, supra,* established the basic constitutional test against which legislation such as Section 5 must be measured: "[h]as Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?" 383 U.S. at 324. This test was refined by Mr. Justice Black in *Oregon* v. *Mitchell,* 400 U.S. 112 (1970), when he established three criteria for evaluating legislation enacted by Congress pursuant to its powers under Section 2 of the Fifteenth Amendment, including the recognition that Congress may not strip the States of their power to govern themselves or to convert our national government of enumerated powers into a central government of unrestrained authority. *Id.* at 128.[14] It is in the context of the basic test established by Mr. Chief Justice Warren, as refined by Mr. Justice Black,

---

[13] A Texas study introduced into evidence below catalogues that State's experience with Section 5. Report of the Committee on Elections, Texas House of Representatives, 64th Legislature (Nov. 12, 1976) [Second Request by Plaintiffs for Admission of Facts and Genuineness of Documents, Exhibit "B", City of Rome v. United States, No. 77-0797 (D.D.C. April 9, 1979)].

[14] Another criterion was that Congress may not by legislation repeal other provisions of the Constitution. Oregon v. Mitchell, 400 U.S. 112, 128 (1970). In the context of the case at bar, the "other provisions of the Constitution" are not only the Federalism principles of Article IV, Section 4 and the Tenth Amendment, see pp. 23-28, *infra,* but also the First, Fifth, Ninth and Tenth Amendments, as protections of the rights of the citizens of Rome. See pp. 29-35, *infra.*

that Appellants ask this Court to review the constitutionality of Section 5.

A. Principles of Federalism

Mr. Justice Black's dissents in *Perkins* v. *Matthews,* 400 U.S. 379, 401-407 (1971); *Allen* v. *State Board of Elections,* 393 U.S. 544, 595-597 (1969); and *South Carolina* v. *Katzenbach, supra* at 359-361, recognized that Section 5 effectively gives federal officials a veto power over state and local laws, directly contrary to Article IV, Section 4 of the Constitution, which commands: "The United States shall guarantee to every State in this Union a Republican Form of Government." The implementation of Section 5 directly violates the Guarantee Clause by creating two functionally dissimilar sets of states within the Union—one self-determined and one determined either by the Attorney General of the United States or the District Court for the District of Columbia.

A recent case has acknowledged that while state sovereignty has been diminished in some areas by the exercise of congressional authority, "it is equally true that if there is any attribute of sovereignty left to the states it is the right of their legislatures to pass, or not to pass, laws." *Maryland* v. *Environmental Protection Agency,* 503 F.2d 215, 225 (4th Cir. 1975), *vacated and rem'd per curiam sub nom. Environmental Protection Agency* v. *Brown,* 431 U.S. 99 (1977).

The ability of the Attorney General to render laws ineffective by refusing to preclear them is clearly a veto power. Such treatment of the laws of States and cities is hardly consistent with the Guarantee Clause. It is similar to the type of treatment recognized in

Dawson v. *Vance,* 329 F.Supp. 1320, 1326 (S.D. Tex. 1971) as "opposite" to the Guarantee Clause: "to lightly subject state statutes . . . to precipitate and peremptory federal court equitable review absent extraordinary circumstances." Under Section 5, however, review is not even judicial; it is administrative. Indeed, one Justice of this Court has suggested that Section 5, which should be treated with "solemnity," may have been reduced to "a trivial, though burdensome, administrative provision." *United States* v. *Board of Commissioners of Sheffield,* 435 U.S. 110, 148 n. 11 (1978) (STEVENS, J., dissenting). The administrative supremacy that has been given to the Attorney General, or actually to his staff, is antithetical to the principles of Federalism embodied in the Guarantee Clause.

This Court gave contemporary significance to the principles of Federalism in *National League of Cities* v. *Usery,* 426 U.S. 833, 851 (1976),[15] where it was held

[15] Other recent cases have addressed the concept of Federalism. Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) and Hutto v. Finney, —— U.S. ——, 98 S.Ct. 2565 (1978) recognize the abrogation of the States' Eleventh Amendment immunity by the Fourteenth Amendment; however, those cases involved mere monetary recovery against States. Such an exercise of Congressional power nowhere approaches the significant and undeniable encroachment, indeed, *veto power* over, the functions most "essential to the separate and independent existence of the States and their governments"—elections. Oregon v. Mitchell, 400 U.S. 112, 125 (1970). Under another recent authority Appellants submit that a provision such as Section 5 violates not merely a particular provision of the Constitution such as the Guarantee Clause or the Tenth Amendment, but the entire federal structure of the Constitution: "Congressional action which treats the states in a manner inconsistent with their constitutionally recognized independent status, therefore, should be void, not because it violates any specific constitutional provision or transgresses the explicit boundaries of any specific grant

that the Federal Government may not impair the exercise by the States of "integral government functions" necessary to their "separate and independent existence." The Court recognized that the rights of States *qua* States are affirmative limitations upon the powers of the central government in the same manner as the limitations imposed by the individual rights amendments to the Constitution. *Id.* at 845. Furthermore, as the Court's opinion noted, these limitations extend to the rights of cities. *Id.* at 855-856 n. 20.

Clearly, an attribute of the sovereignty of a State, and its political subdivisions, is the conduct of elections and enactment of laws, especially where no discriminatory intent is present. Indeed, this Court has established:

> No function is more essential to the separate and independent existence of the States and their governments than the power to determine within the limits of the Constitution . . . the nature of their own machinery for filling local public offices.

Oregon v. *Mitchell*, 400 U.S. 112, 125 (1970).

The tests of constitutional latitude in the Tenth Amendment context were suggested by Mr. Justice Rehnquist in *National League of Cities*, wherein he noted that the means selected must be "carefully drafted so as not to interfere with the State's freedom beyond a very limited, specific period of time." 426 U.S. at 853. In the face of the statistics generated by the administration of Section 5, now compiled and recognized by this Court in *United States* v. *Board of Commissioners of Sheffield*, 435 U.S. 110, 147 (1978)

---

of authority, but because it would be contrary to the structural assumption of the Constitution as a whole." L. TRIBE, A TREATISE ON AMERICAN CONSTITUTIONAL LAW 301 (1978).

(STEVENS, J., dissenting) and *Berry* v. *Doles*, 438 U.S. 190, 201 n.6 (1978) (POWELL, J., concurring), it cannot possibly be said that the means selected to enforce the rights guaranteed by the Fifteenth Amendment were "carefully drafted" so as not to interfere with the States' freedom to conduct elections and enact laws. The Attorney General has objected to submissions in only a very few instances,[16] and yet every municipality, indeed, even minor political units, including those having no authority over any electoral system, in every covered state, are made to endure the protraction and frustration [17] of the Section 5 process.

One justification previously given for the appropriateness of the Section 5 remedy was that it contained an administrative alternative which was believed to be a "rapid method of rendering a new state election law enforceable," *Allen* v. *State Board of Elections*, 393 U.S. 544, 549 (1969); *Morris* v. *Gressette*, 432 U.S. 491 (1977); see pp. 4-7a, 44b, *infra*. Therefore, Section 5 should be analyzed by this Court to determine whether it has functioned in the intended manner. Appellants submit that realistic analysis of the day-to-day operation of Section 5 will reveal that it does not operate in this manner.[18]

---

[16] According to the latest published figures, the rate of objection to changes is 1.51%. In 1978, the rate was 0.8%. It would appear that the administrative preclearance alternative, having become a mere "inventory of voting procedures," has paradoxically become a "dead letter." Georgia v. United States, 411 U.S. 526, 531, 538 (1973).

[17] Even more frustrating is the holding of the court below that a city free of discriminatory practices may not bailout from this requirement, see p. 23b, *infra*.

[18] The statutory language of Section 5 and the administrative regulations of the Attorney General require the Attorney General

The review process of the Attorney General is especially objectionable when measured by the limitations on the power of Congress set forth by Justice Black in *Oregon* v. *Mitchell, supra.* There is no provision for a hearing; there are no written standards of review; there is a confidential file unavailable to submitting jurisdictions; there is no requirement of findings of fact; and there is no necessity of finding dilutive factors. Indeed, there is not even a necessity to reach conclusions that a change is discriminatory. As Justices White, Powell and Rehnquist observed, in dissent, in *Georgia* v. *United States,* 411 U.S. 526, 543-544 (1973): "[W]hy should the State be forced to shoulder that burden where its proposed change is so colorless that the country's highest legal officer professes his inability to make up his mind as to its legality?" Notwithstanding the breadth of this power, the administrative discretion of the Attorney General is not subject to judicial review, *Morris* v. *Gressette,* 432 U.S. 491, 507 (1977). Indeed, according to the court below,

to act on a submission within 60 days; however, "Catch 22's" abound. The 60 days does not begin until the Justice Department has received a "complete" submission, and "completeness" is wholly in the Department's unreviewable discretion; the 60 days does not begin until the submission is received by the Justice Department; the Justice Department may wait until the sixtieth day to mail an objection, and if the objection falls on a holiday, the Department has until the next working day. Declination of a submission as inadequate (and the consequent suspension of the 60-day limitation) is "frequent." *Hearings on the Extension of the Voting Rights Act before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives,* 94th Cong., 1st Sess., Ser. 1, pt. 1 at 302, (hereinafter referred to as *"Hearings"*). In short, the 60-day time frame is seldom, if ever, adhered to.

even the constitutionality of his actions is not subject to judicial review, see p. 6a, *infra,* note 3.[19]

B. Rights of Private Appellants

Because scheduled elections for local offices in the City of Rome have not been held since 1974,[20] Appel-

[19] Count V of Appellants' complaint sought review by the court below of not only the reasonableness or legality of the Attorney General's actions and nonactions in his administration of Section 5 with respect to the City of Rome, but also the *constitutionality* of such practices. The court below, see pp. 6-7a, *infra,* held this issue to be non-reviewable, and Appellants submit that, in so holding, a singular incidence of administrative supremacy has been created in the Attorney General. Language in Georgia v. United States, 411 U.S. 526 (1973) implies that the actual conduct of the Attorney General is, or should be, reviewable. *Id.* at 541 n.13. The court below observed that a submitting jurisdiction can obtain full and adequate redress in a *de novo* proceeding. Appellants submit that the delay in the holding of democratic elections and the expense attendant to a *de novo* proceeding such as this would be avoided if the Attorney General were required in this and similar cases to apply constitutional standards. The ultimate question of constitutionality should always be entitled to judicial review. St. Joseph Stock Yards Co. v. United States, 298 U.S. 38 (1936); Heikkila v. Barber, 345 U.S. 229 (1953).

[20] One of the 1966 laws enacting electoral changes, the reduction of wards from nine to three, see pp. 42-43b, *infra,* was precleared by the Attorney General and therefore effectively amended Rome's charter. When this *effective* provision (without the other, *ineffective* changes) is inserted into the existing charter (pre-November 1964 laws), the result is to provide for a total of three commissioners, one from each of the three wards, rather than nine commissioners. The new provision renders the city commission, under the Charter with its existing provisions (such as the requirement of five for a quorum), powerless as a government. Moreover, when the Attorney General objected to the changes, the city boards were already operating on a staggered term basis. Any elections under the "old law" would necessarily cut short some existing terms. In such a situation, the State Constitution would require not only legislative action but a popular referendum as well, and each of

lants Hamler and Hunter, as private parties, challenge Section 5 as violative of their rights of political participation. This case constitutes the first such challenge before this Court; it presents for resolution a conflict between an arguable Fifteenth Amendment right and rights of political participation under the First, Fifth, Ninth and Tenth Amendments.

In addressing this issue, the court below found that the freezing of the electoral process was as much the result of actions by Rome officials as of the Voting Rights Act, see p. 42b, *infra*;[21] that, pretermitting the

---

these steps would be subject to preclearance. Elections and election results in such a chaotic posture are impossible. See Plaintiffs' Post-Argument Brief at 1-2, City of Rome v. United States, No. 77-0797 (D.D.C. April 9, 1979).

[21] In spite of the fact that the infeasibility of elections in Rome is "technical," see p. 43b, *infra*, it is no less real. Such a characterization by the court below, together with the finding that the freezing of elections was partially caused by the officials of the City of Rome, Appellants respectfully submit, demonstrates several inevitable results of the enforcement concept of Section 5: a failure to appreciate the sanctity and seriousness of state laws; a failure to acknowledge the "odd evolution" of Section 5 and the history of its enforcement; a failure to recognize the practicalities, hardships, and most important, time consumption of changing State laws, and the understandable bewilderment of all citizens of localities like Rome at not having elections. *See* Thernstrom, *supra*, note 9.

Many of these difficulties arose because Section 5 "remained practically dormant for several years," Hearings, *supra*, note 18, at 1480. It had barely begun to be implemented in 1969 and 1970. *Id.* at 169, 1480. "The Department of Justice did not adopt regulations implementing § 5's preclearance provisions until September, 1971, six years after the passage of the Act and nearly two years after this Court's decision in *Allen*, [393 U.S. 544 (1969)]" United States v. Board of Commissioners of Sheffield, 435 U.S. 110, 148 (1978) (STEVENS, J., dissenting). *See also* Berry v. Doles, 438 U.S. 190, 197 n.1 (1978) (POWELL, J., concurring).

question of whether the right to vote in a municipal election is a fundamental right, Section 5 is justifiable in the interest "of enforcing the Fifteenth Amendment," see p. 43b, *infra;* and that "[i]n any event, a five-year suspension of elections during § 5 litigation is by no means unusual," see p. 41b, *infra,* n.77.

(1) *Rights Protected By The First Amendment.*

The election of Appellant Hunter, for example, may not be of constitutional magnitude; however, the constitutional violations which prevent such an election are worthy of attention by this Court, because they amount to a federal administrative veto of state and local laws. With respect to such state and local election laws, this Court has consistently, and for decades, recognized and protected the continuing availability of the franchise and political participation for all citizens. *See Illinois State Board of Elections* v. *Socialist Workers Party,* 47 U.S.L.W. 4197 (U.S. Feb. 22, 1979) (No. 77-1248); *Dunn* v. *Blumstein,* 405 U.S. 330 (1972); *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966); *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *Wesberry* v. *Sanders,* 376 U.S. 1 (1964); *Yick Wo* v. *Hopkins,* 118 U.S. 356 (1886); *Ex parte Siebold,* 100 U.S. 371 (1880). *See also Buckley* v. *Valeo,* 424 U.S. 1 (1976); *Elrod* v. *Burns,* 427 U.S. 437 (1976).

Although the right to vote, as distinguished from a right not to be denied the vote for improper reasons, does not appear on the face of the Constitution, this Court has viewed the right as fundamental and not subject to abolition. *See* L. Henkin, *Constitutional Rights & Human Rights,* 13 Harv. C.R.-C.L. L. Rev. 593, 610 n. 61 (1978).

The framers of the Constitution never contemplated that Congress, much less the Attorney General, would establish or control electoral systems even for a "village alderman," *Oregon* v. *Mitchell,* 400 U.S. 112, 125 (1970).[22] Even more foreign to the framers would have been the suggestion that local elections would be "frozen" by a federal veto of local election laws, especially in the absence of a constitutional violation.

As Appellants previously noted, the court below made the remarkable observation that "suspension of elections during § 5 litigation is by no means unusual," see p. 41b, *infra,* n.77. The court pointed out that, at the time of remand by this Court, in cases involving the respective cities, New Orleans' elections had been frozen for six years and Richmond's elections had been frozen for five years.[23]

Recognizing the importance of the timeliness of political speech, this Court, in *Elrod* v. *Burns, supra* at 373, reaffirmed: "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Moreover, "[d]efer-

[22] Section 5 applies to minor changes of minor political units. *See* p. 14-15, *infra.* The intention of Congress was that Section 5 be given the "broadest possible scope." Allen v. State Board of Elections, 393 U.S. 544, 566-567 (1969). This breadth constitutes, in the context of First Amendment freedoms, *overbreadth.* See Elrod v. Burns, 427 U.S. 347, 362-363 (1976); First National Bank v. Bellotti, 435 U.S. 765, 786 (1978). Section 5 fails in the requirement that it be "closely drawn to avoid unnecessary abridgement," Buckley v. Valeo, 424 U.S. 1, 25 (1976).

[23] This result of Section 5 epitomizes the intrusiveness of the remedy. This case, which has established in the record below a sampling of the day-to-day operation of Section 5, may be the "difficult to imagine" one "having a greater potential impact on our federal system" than San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 44 (1973).

ment of a right, especially one as sensitive and essential as the exercise of the first duty to citizenship, can be tantamount to its denial." *Rosario* v. *Rockefeller,* 410 U.S. 752, 766 (1973) (POWELL, J., dissenting).

In *Buckley* v. *Valeo, supra* at 48-49, it was said, "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . ." Furthermore, *First National Bank* v. *Bellotti,* 435 U.S. 765, 802 (1978) (BURGER, C.J., concurring) teaches us that the "First Amendment does not 'belong' to any definable category of persons or entities: it belongs to all who exercise its freedoms." All the citizens of Rome desire that their freedoms be restored.

(2) *Rights Protected By The Fifth Amendment.*

First National Bank v. *Bellotti, supra* at 780, recently affirmed the principle that: "Freedom of speech and the other freedoms encompassed by the First Amendment always have been viewed as fundamental components of the liberty safeguarded by the Due Process Clause . . . ."

It requires no citation of authority to establish that due process requires application of objective standards and a hearing before property or liberty may be deprived. However, a review of the text of Section 5 reveals no provision for a hearing nor any standards by which the electoral system of the City of Rome is to be judged by the Attorney General. The Attorney General's regulations similarly provide for no hearing.

The "objection letter" of the Assistant Attorney General directed to the electoral changes of Rome

(*Second Supplement to Parties' First Stipulation of Facts,* Exhibit 45, *City of Rome* v. *United States,* No. 77-0797 (D.D.C. April 9, 1979)), typical of such letters, is conclusory only (albeit conclusory of an inability to conclude) and lacks any specific findings of fact or any indication of the sources of information on which the decision was based. The absence of any textual limitation upon the actions of the Attorney General, including the absence of a provision for a hearing, is aggravated by the unavailability of judicial review under *Morris* v. *Gressette,* 432 U.S. 491 (1977). Section 5, an admittedly "severe" remedy, lacks in basic constitutional protections and denies Private Appellants due process of law.

(3) *Rights Reserved To The People Under The Ninth And Tenth Amendments.*

Private Appellants, through the freezing effect of Section 5, have been unable to vote, to express their political beliefs, to engage in political activities, to associate to advance ideas, to support candidates, to be candidates and to defeat candidates. Many of these activities are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (1934). In Appellants' view these are First Amendment rights guaranteed by the Fifth Amendment against impairment. Even if the rights of the Private Appellants are not "fundamental," they should be deemed "penumbral" rights reserved to the people of Rome and similarly situated cities by the Ninth and Tenth Amendments. Private Appellants argue that, aside from the rights and powers their state and city may retain by virtue of principles of Federalism, they, as individuals,

have suffered the loss of rights guaranteed by the First, Fifth, Ninth and Tenth Amendments.

In *United Public Workers* v. *Mitchell,* 330 U.S. 75, 94-95 (1947), similar contentions were accepted:

> We accept appellant's contention that the nature of political rights reserved to the people by the Ninth and Tenth Amendments are involved. The right claimed as inviolate may be stated as the right of a citizen to act as a party official or worker to further his own political views. Thus we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in those fields, there is a corresponding impairment of that right under the Fifth Amendment.

All of the citizens of Rome seek to have restored and protected their rights of political participation, not under the Fifteenth Amendment, but under the "other provisions" of the Constitution of the United States. This is especially appropriate where their government has been responsive and free of racial animus.

5. The Electoral Changes and Annexations Presently Before This Court Have Been Precleared By The Attorney General Of The United States.

In light of the burden which would be imposed on covered jurisdictions by the declaratory judgment procedure of Section 5, Congress provided an alternative by requiring the Attorney General to interpose an objection to legislation submitted to him pursuant to the Act sixty days after receipt of such a submission. *Morris* v. *Gressette,* 432 U.S. 491, 495 (1977). Appellants bring before this Court two important issues re-

lating to the function of the Attorney General under Section 5, the resolution of which is essential to the equitable administration of Section 5.

A. Administrative Preclearance of Georgia Election Law

The Georgia Municipal Election Code of 1968, codified as Title 34A of the Code of Georgia of 1933, contains the following three provisions. Georgia Code Ann. § 34A-102 provides that the election code applies to all cities and all city elections. See p. 1d, *infra*. Georgia Code Ann. § 34A-902 provides for numbered posts, identical to the numbered post provisions in the Charter of the City of Rome. See p. 1d, *infra*. Georgia Code Ann. § 34A-1407(a) establishes a majority vote requirement, unless the particular charter of a city, then or in the future, provides for a plurality vote. See pp. 1-2d, *infra*. (As of the effective date of the 1968 Municipal Election Code, April 4, 1968, the Charter of the City of Rome did not provide that a candidate may be nominated or elected by a plurality. Rather, it provided for a majority vote. The Charter also called for numbered posts.) Georgia Code Ann. § 34A-1407 (b) provides for the conduct of run-off elections. See pp. 2-3d, *infra*.

The Georgia Municipal Election Code was submitted by the Attorney General of Georgia to the Attorney General of the United States on May 13, 1968. The submission highlighted the majority vote, run-off election and numbered post provisions of the Code, and the fact that cities in Georgia were *enabled* to establish these provisions. The Attorney General of the United States, in responding to the submission by the Attorney General of Georgia, objected to the use of various features of the 1968 Georgia Municipal Election Code

in certain described jurisdictions. However, with respect to the majority vote, run-off elections and numbered posts, no such reservation was made.[24]

In fulfillment of his statutory duty, the Attorney General must give full consideration, indeed, "the most thoughtful deliberation," *Berry* v. *Doles,* 438 U.S. 190, 201 n.6 (1978) (POWELL, J., concurring), to a complete submission. To the extent that the Attorney General reviewed all portions of the Georgia Municipal Election Code of 1968, as he is required to do, and interposed specific objections to certain portions of the Code and certain municipalities covered by the Code, he necessarily precleared the other provisions of the Code, as well as their applicability to those municipalities with respect to which he did not object.

In another case, Appellee, the United States, asserted with respect to the 1964 Georgia Election Code, applicable to state and county, rather than municipal elections, that the Attorney General did not give specific attention to the numbered posts and majority vote features of that Code. A three-judge court in the United States District Court for the Northern District of Georgia, in an action summarily affirmed by this Court, held that the 1964 Georgia Election Code was properly presented to the Attorney General, and the majority vote and numbered posts provisions were, in fact, precleared. *United States* v. *Georgia,* 351 F.Supp. 444 (N.D.Ga. 1972), *aff'd mem.,* —— U.S. ——, 98 S.Ct.

---

[24] Letter of Mr. S. J. Pollak, Assistant Attorney General, to Mr. A. K. Bolton, Attorney General of the State of Georgia (July 15, 1968) [First Request by Plaintiffs for Admissions of Facts and Genuineness of Documents, Exhibit "A," City of Rome v. United States, No. 77-0797 (D.D.C. April 9, 1979)].

2840 (1978). Thus, county governments in Georgia are authorized to utilize these common electoral features.

The court below has created the following anomaly: while counties and the State may utilize numbered posts and majority vote provisions, Georgia cities cannot use identical features because the State of Georgia allegedly did not submit "'in an unambiguous and recordable manner' *all* municipal charter provisions," p. 25b, *infra* (emphasis supplied).

It is also clear that the Municipal Election Code enables Georgia municipalities to utilize these electoral features in the future *and this enablement was itself precleared by the Attorney General.* This Court, in *East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636, 637 n.2, 638 n.6 (1976) noted that enabling legislation is not effective where the Attorney General interposes a specific objection. Conversely, where the Attorney General fails to interpose an objection to the enabling features of state legislation, it must be presumed that such enabling legislation stands without objection and is of full force and effect. More recently, the significance of such enabling legislation and its preclearance by the Attorney General is highlighted in *Wise* v. *Lipscomb,* —— U.S. ——, 98 S.Ct. 2493 (1978).

Appellants respectfully submit that the opinion below, in this respect, highlights the immediate "need to bring a measure of common sense" to the application of the Voting Rights Act to the affected jurisdictions. *Berry* v. *Doles,* 438 U.S. 190, 201 (1978) (POWELL, J., concurring).

B. Failure by the Attorney General to Object in a Timely Manner

During the preclearance process, Rome moved for reconsideration of the Attorney General's previous objection to its electoral changes on May 24, 1976, which motion was acknowledged by him. On July 14, 1976, before he had responded and without solicitation, the city supplemented its request with two affidavits which the court recognized were "brief . . . [and] hardly of a nature to impose a significant burden on the Attorney General," see p. 28b, *infra* n.64. The affidavits were not acknowledged. It was not until August 12, 1976, that the Attorney General responded. Rome contended that the statutory sixty-day period began on May 24, the date of the initial request for reconsideration, and that the Attorney General, having failed to respond within the required time, precleared the changes. *Morris* v. *Gressette, supra.* Appellees contended that the period began on July 14, and that the response was thus timely.

The court below found that the sixty-day period in which the Attorney General of the United States is required to respond "commence[s] anew" when he receives even an unsolicited supplement to a submission. See p. 28b, *infra.* Appellants submit that this holding was in error and contrary to the Attorney General's own regulations, 28 C.F.R. §§ 51.3, 51.10(a) and 51.18 (1978).

These regulations, as approved by this Court in *Georgia* v. *United States,* 411 U.S. 526 (1973), provide that the sixty-day period shall commence upon receipt by the Attorney General of a submission which satisfies the requirements of 28 C.F.R. § 51.10(a). Procedures for requesting additional material and for determining the commencement of the sixty-day period

when a submission is inadequate are described in § 51.18, which provides that if a submission does not satisfy the requirements of the Attorney General, he shall request further information and advise the submitting authority that the sixty-day period will not commence until such information is received.

The sixty-day period that runs upon the submission of a request for reconsideration is tolled only, under 28 C.F.R. § 51.18(a), if a submission does not satisfy the requirements of § 51.10(a) and the Attorney General requests further information. It is clear that all submissions by the City of Rome were complete as of the receipt of the request for reconsideration on May 24, 1976. This is established by virtue of the Attorney General's letter of acknowledgment of May 25, 1976. The letter acknowledges that thirteen annexations and the electoral changes were still under consideration, and the record is clear that no determination of inadequacy or further requests for information were made by the Attorney General. The voluntary submission of two supplementary affidavits by the City on July 14, 1976, does not, under the Attorney General's own regulations, toll the sixty-day time period. *See also* 28 C.F.R. § 51.3(d).

Under *Georgia* v. *United States, supra,* the Attorney General is allowed to object "by simply saying that he cannot make up his mind." *Id.* at 545. However, Appellants believe that he must object within sixty days, rather than eighty.

CONCLUSION

For the reasons submitted herein, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

ROBERT M. BRINSON
City Attorney of Rome, Georgia
Brinson, Askew & Berry
200 North Fifth Avenue
Rome, Georgia 30161
(404) 291-8853

WILLIAM E. SUMNER
BURTON B. GOLDSTEIN, JR.
Long, Aldridge, Heiner,
Stevens & Sumner
1900 Rhodes-Haverty Building
Atlanta, Georgia 30303

JOSEPH W. DORN
Kilpatrick, Cody, Rogers,
McClatchey & Regenstein
2033 K Street, N.W.
Suite 400
Washington, D.C. 20006

Counsel for Appellants

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 77-0797

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER,
Plaintiffs,

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS, III, Assistant Attorney General of the United States,
Defendants.

Before McGOWAN, Carl, *Circuit Judge,* GASCH, Oliver, and RICHEY, Charles R., *District Judges.* By Charles R. Richey, *District Judge.*

MEMORANDUM

Filed February 22, 1978

This case, brought under the Voting Rights Act of 1965, 42 U.S.C. §§ 1971 *et seq.,* is presently before the Court on: (1) defendants' renewed motion to dismiss Counts II, IV, and V of the amended complaint herein; (2) defendants' motion for a protective order to prevent the taking of the deposition of Frederick J. McGrath; (3) plaintiffs' motion to compel discovery; (4) plaintiffs' motion for an order that certain facts be taken as established; (5) defendants' motion for an extension of time within which to complete discovery; and (6) the parties' joint motion for an extension of time within which to file summary judgment motions.

I. Defendants' Renewed Motion To Dismiss And The Related Discovery Motions

The initial complaint in this case, filed on May 9, 1977, contained six claims upon which plaintiffs sought relief. Defendants answered on July 12, 1977, and on that same date filed a motion to dismiss three of these claims. The three claims that were the subject of defendants' motion respectively sought declaratory judgments that:

> (1) the City of Rome is not required to obtain preclearance of the electoral changes here in issue because no "test or device" within the meaning of 42 U.S.C. § 1973b had been used in Rome during the 17 years prior to the filing of the instant action "for the purpose or with the effect of denying or abridging the right to vote on account of race or color";
>
> (2) section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, is unconstitutional; and
>
> (3) section 5 was applied by the Attorney General of the United States to the City of Rome in an unconstitutional manner.

This Court heard arguments on defendants' motion to dismiss on October 28, 1977; on October 31, 1977, the Court ruled that it would, in the interests of justice, defer ruling on the pending motion to dismiss until plaintiffs had filed their amended complaint and defendants had filed an answer thereto.[1] Thereafter, plaintiffs filed an amended complaint, and defendants, on November 21, 1977, filed the renewed motion to dismiss that is now before the Court. The renewed motion seeks the dismissal of the three claims hereinabove described, respectively termed Counts II, IV, and V of the amended complaint.

---

[1] The Court's Order of October 31, 1977, also established a timetable to govern discovery and further filings with the Court.

After defendants filed the renewed motion to dismiss, the parties undertook extensive discovery. Plaintiffs have sought discovery of, *inter alia,* facts related to the claims contested in the pending motion to dismiss. In particular, plaintiffs have propounded interrogatories, requests for admission, and requests for the production of documents that relate to Count V of the amended complaint. In addition, plaintiffs noted the deposition of Frederick J. McGrath, an attorney in the Department of Justice who, at the administrative level, reviewed the City of Rome's application for section 5 preclearance. Apparently this deposition was also intended to discover facts related to Count V.

Based on their contention that this Court lacks subject-matter jurisdiction over Count V (and that Count V should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(1)), defendants refused to answer or produce documents related to Count V. On the same grounds, defendants also opposed the deposition of Mr. McGrath, and they now seek a protective order to block said deposition. Plaintiffs in turn filed a motion to compel answers to all discovery demands they had previously made.

It appears to the Court that it continues to be appropriate and in the interests of justice to defer ruling on defendants' motion to dismiss Counts II and IV of the amended complaint. The Court will consider the parties' respective arguments on these Counts when all discovery is completed and when summary judgment motions, if any, have been filed. However, because the main of the discovery dispute(s) now before the Court is inextricably tied to the dispute with respect to this Court's jurisdiction over Count V, the Court will at this time rule on that aspect of defendants' motion. For the reasons hereinafter stated, the Court will grant defendants' motion to dismiss Count V of the amended complaint.

A. The Attorney General's interposal of an objection to the City of Rome's proposed electoral changes is not subject to judicial review. Accordingly, the Court will dismiss Count V of the Amended Complaint for lack of subject matter jurisdiction.

Plaintiffs allege in Count V that defendants, by interposing an objection to Rome's proposed electoral changes *without* conducting a hearing and *without* making findings, violated article 4, section 4 of, and the first, fifth, ninth, tenth, and fifteenth amendments to, the United States Constitution. Plaintiffs therefore assert that the defendants acted beyond the scope of their authority and that defendants' objection to (i.e., refusal to preclear) the electoral changes here in issue is therefore invalid and without force or effect. Defendants premise their argument for dismissal of this Count on the Supreme Court's recent decisions in *Morris v. Gressette,* 432 U.S. 491 (1977), and in *Briscoe v. Bell,* 432 U.S. 404 (1977), and on the District of Columbia Circuit's recent decision in *Harris v. Bell,* 562 F.2d 772 (1977). According to defendants, these cases preclude this Court from reviewing the Attorney General's exercise of discretion under section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and thus deprive this Court of subject-matter jurisdiction over plaintiffs' Count V claims.

The Court has carefully examined the cases cited by defendants and concludes that these recent decisions do indeed compel the conclusion that this Court is without jurisdiction over plaintiffs' challenge to the procedures used by the Attorney General in deciding to interpose an objection to the City of Rome's proposed electoral changes. Admittedly, all three of the above-cited cases arose in a different posture than the instant case: *Morris* involved a challenge to the Attorney General's failure to interpose a timely objection to certain proposed electoral changes; *Briscoe* involved a state's challenge to its classification as a jurisdiction subject to the Act's preclearance requirements; and *Harris* involved a challenge to the Attorney General's withdrawal

of a previously-interposed objection. In contrast, this case involves a challenge to the Attorney General's interposal of an objection to certain proposed electoral changes.[2] The distinction between the instant case and the cases relied upon by defendants does not, however, vitiate the precedential force of the jurisdictional principle established in *Morris,* and followed in *Briscoe* and *Harris.*

In *Morris,* the Supreme Court held that even though no provision of the Voting Rights Act expressly precludes judicial review of the Attorney General's decision to preclear electoral changes under section 5, the legislative scheme of the Act as a whole compels the conclusion that "Congress intended to preclude all judicial review of the Attorney General's exercise of discretion or failure to act." 432 U.S. at 507 n.24. In support of this reasoning, the Court emphasized the fact that the Attorney General's decision not to interpose an objection to proposed electoral changes is not conclusive of the constitutionality of such changes. Rather, such electoral changes can at any time be challenged in "traditional constitutional litigation." 432 U.S. at 507.

The legislative scheme of the Act as a whole similarly compels the conclusion that a decision by the Attorney General to interpose an objection to proposed electoral changes, as in the instant case, was also not intended to be subject to judicial review. The administrative preclearance procedure is but one of two preclearance avenues that a state or local jurisdiction can pursue under section 5. It is an entirely optional procedure, and a jurisdiction subject to section 5's preclearance requirement need not apply to the Attorney General for administrative preclearance. It is sufficient if an applicant-jurisdiction seeks and obtains a declaratory judgment from a three-judge court

---

[2] It is of no consequence in assessing this Court's jurisdiction over the instant challenge whether the challenge is couched in terms of improper procedures or in terms of improper result.

of the United States District Court for the District of Columbia that the proposed electoral change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the [rights of language minority groups]." Moreover, even if, as here, the Attorney General objects to certain proposed electoral changes, the applicant-jurisdiction can *always* seek such a declaratory judgment from a three-judge court in this District, which is precisely what plaintiffs have done in Count VI of the amended complaint herein. The existence of this "co-equal" judicial preclearance procedure persuades this Court that Congress intended there to "be no review of the Attorney General's application of the section 5 standards in deciding whether to interpose an objection within the sixty-day period." *Harris v. Bell*, 562 F.2d at 774.[3] Accordingly, the Court

[3] Plaintiffs have argued that *Morris*, *Briscoe*, and *Harris* must be distinguished from the instant case because here plaintiffs challenge the Attorney General's actions as violative of the Constitution rather than as violative of some statute, such as the Administrative Procedure Act. It is plaintiffs' contention that even if Congress can preclude judicial review of allegedly illegal actions of an officer of the Executive Branch, it cannot, consistent with the doctrine of judicial supremacy established by Marbury v. Madison, 1 Cranch 137 (1803), preclude review of those executive actions which are alleged to be unconstitutional.

Plaintiffs' argument is wholly untenable. Congress has neither totally insulated the Attorney General's actions from judicial scrutiny nor totally deprived plaintiffs of judicial redress. Congress merely has established *an exclusive means* of obtaining "review" of the Attorney General's determination—a *de novo* proceeding in the District Court for the District of Columbia. There can be no doubt plaintiffs can obtain full and adequate redress by means of such a *de novo* proceeding and there can be no doubt that Congress has the power, "pursuant to its constitutional power under Art. III, § 1, to "ordain and establish" inferior federal tribunals," to so limit the forums in which constitutional challenges may be brought. South Carolina v. Katzenbach, 383 U.S. 301, 331 (1966). *See* Bowles v. Willingham, 321 U.S. 503, 510-12 (1944); Yakus v. United States, 321 U.S. 414, 427-33 (1944). As Justice Marshall wrote for the Court in a related context in *Briscoe:*

> [The limitations on review] . . . may well be an "uncommon exercise of congressional power," *South Carolina v. Katzenbach*, 383 U.S. at 334; see also *Morris v. Gressette*, [432 U.S.] at 501. But there can be no doubt that in attacking the pervasive evils and tenacious defenders of voting discrimination, Congress acted within its "power to enforce" the Fourteenth and Fifteenth amendments by appropriate legislation. *South Carolina v. Katzenbach, supra.*

432 U.S. at 414-15.

will, pursuant to Fed. R. Civ. P. 12(b)(1), dismiss Count V of the amended complaint for lack of subject-matter jurisdiction.

B. The Court will grant defendants' motion for a protective order and deny plaintiffs' motion to compel, both without prejudice, and will order the parties to confer in person and submit a joint memorandum to the Court with respect to any remaining contested discovery requests.

The dismissal of Count V would appear to resolve most of the discovery disputes identified by the parties in plaintiffs' motion to compel, defendants' motion for a protective order, and the respective oppositions thereto. Almost all of defendants' objections to plaintiffs' discovery requests were couched in terms of "relevancy" on the ground that (1) this Court had no subject-matter jurisdiction over Count V, and (2) the discovery requests were not relevant to any other Counts of the amended complaint. Plaintiffs have not indicated with specificity which, if any, of the disputed discovery requests they deem to be relevant to the *other* pending Counts. Under these circumstances, and in view of the Court's dismissal of Count V pursuant to Fed. R. Civ. P. 12(b)(1), the Court concludes that it is appropriate (1) to deny plaintiffs' motion to compel, and (2) to grant defendants' motion for a protective order.

Both of these rulings shall be without prejudice to plaintiffs' renewal of appropriate discovery requests that are relevant to the remaining counts in the amended complaint.[4]

In order to expedite the discovery process herein, the Court will order the parties to confer in person within five (5) days of the date of this Memorandum and accompanying Order so that they can identify any remaining areas of dispute with respect to the discovery requests that were the subject of the instant motions to compel and for a protective order. The Court will further order the parties to submit within five (5) days after their conference a joint memorandum that shall set forth any such remaining disputed discovery matters and the parties' respective positions, along with relevant points and authorities, on such disputed matters. This procedure seems particularly appropriate in light of defendants' representation that they are "willing to provide to plaintiffs . . . any material or information that it possesses and is relevant to, or is likely to lead to information which is relevant to, the issue of whether the voting changes for which plaintiffs seek preclearance are nondiscriminatory in purpose and effect." Defendants' Response of February 10, 1977, at 1.

---

[4] Plaintiffs have suggested that defendants should be deemed to have waived their right to object to the discovery sought by plaintiffs because of certain representations made by the Government in a related case in the Northern District of Georgia. The Court finds that the particular representations relied upon by plaintiffs were quite limited in scope and were in any case made prior to the Supreme Court's decisions in *Morris* and *Briscoe*. Accordingly, the Court concludes that defendants have *not* waived any right to assert appropriate objections to any of plaintiffs' discovery requests.

II. Plaintiffs' Motion For An Order That Certain Facts Be Taken As Established.

During the discovery period herein, plaintiffs served upon defendants a number of requests for admission pursuant to Fed. R. Civ. P. 36. As to seven of these requests, defendants respond that they "are without knowledge or information sufficient" to determine the truth of the requested admissions. According to plaintiffs, such responses failed to comply with Rule 36(a), and plaintiffs therefore ask the Court to deem these matters admitted for the purposes of this litigation.

The Court agrees with plaintiffs that defendants' responses do not comply fully with Rule 36(a). To the extent that defendants, in formulating their responses to the seven requests in issue, have relied upon the fact that these requests concern "ultimate facts" for which plaintiffs bear the burden of proof, they have misinterpreted the effect of Fed. R. Civ. P. 36. Rule 36(a) expressly permits requests to encompass "*any* matters within the scope of Rule 26 (b)," and Rule 26(b) in turn permits discovery of "*any* matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." (Emphasis added.) These two rules, when read together, expressly permit requests for admissions to address claims of the party seeking discovery; and, as a general rule, the party asserting a claim bears the burden of proof thereon. *See* S. Gard, *Jones on Evidence*, § 5:5 (1972). Thus, it matters not that plaintiffs herein bear the burden of proof on the issues that they request defendants to admit. *See* C. Wright & A. Miller, *Federal Practice and Procedure*, § 2254, at 709 (1970). *See also Adventures in Good Eating, Inc. v. Best Places to Eat, Inc.*, 131 F. 809 (7th Cir. 1942). It is also irrelevant that plaintiffs' requests sought admissions on so-called "ultimate facts." Rule 36(a) neither expressly

nor implicitly excepts such facts from its requirements. Indeed, the rule expressly states that a party may not refuse to respond to a request merely on the ground that the "matter for which an admission has been requested presents a genuine issue for trial."

To the extent that defendants now rely on the adequacy of their response that they "are without knowledge or information sufficient" to determine the truth of the requested admissions, defendants ignore the express language of Rule 36(a). In pertinent part, the rule states:

> An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or reasonably obtainable by him is insufficient to enable him to admit or deny.

Since defendants failed to state in their responses that they had made the reasonable inquiry required by Rule 36(a), defendants failed to comply literally with the rule. Nevertheless, defendants, in their memorandum in response to plaintiffs' motion for an order that certain facts be taken as established, have asserted that they have made the requisite "reasonable inquiry" and have expressed their willingness to amend their responses to the contested requests in order to comply literally with Rule 36(a). Under these circumstances, the order sought by plaintiffs is unwarranted, and the Court will therefore deny plaintiffs' motion to take certain facts as established. The Court will, however, order defendants to serve an amended answer upon plaintiffs within five (5) days of the date of this Memorandum and accompanying Order.

III. The Motions For Extensions.

The Court has before it two separate motions for extensions of time beyond the closing dates established by this

Court's Order of October 31, 1977, as amended by this Court's Order of December 12, 1977.

The first of these two motions for extension is defendants' motion to extend the discovery period herein an additional 45 days. Defendants assert such additional time is necessary to permit them time to take depositions of additional persons who have knowledge of facts related to the issues in this case. Plaintiffs strenuously oppose this motion for extension: They assert that they are ready to proceed with this case as soon as the discovery disputes before the Court have been resolved. The Court concludes that granting defendants a brief extension will aid in the full development of the facts of this case. The Court will not, however, permit discovery to continue for the full 45 days suggested by defendants. Accordingly, the Court will grant the parties an additional 20 days from the date of this Memorandum and accompanying Order within which to complete all further discovery in this case.

The second of the pending motions is a joint motion to extend the time for the filing of summary judgment motions until the pending discovery disputes are resolved and until all discovery herein is completed. The Court agrees with the parties that summary judgment motions would be premature until all discovery has been completed. Accordingly, the Court will grant the parties' joint motion for an extension of time. However, because the Court cannot be sure at this time when all discovery disputes will be resolved, the Court will not now establish a firm date when such summary judgment motions will be due. Upon the completion of all discovery and the resolution of any and all remaining discovery disputes, the Court will give the parties ten (10) days in which to file their summary judgment motions.

An Order in accordance with the foregoing will be issued of even date herewith.

/s/ CARL MCGOWAN
Carl McGowan
United States Circuit Judge

/s/ OLIVER GASCH
Oliver Gasch
United States District Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C. A. No. 77-0797

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER,
Plaintiffs,

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS, Assistant Attorney General of the United States,
Defendants.

ORDER

Filed February 22, 1978

Upon consideration of the pending motions, the oppositions thereto, the respective points and authorities in support thereof and in opposition thereto, the arguments of counsel in open Court on October 28, 1977, and the entire record herein, and for the reasons set forth in this Court's Memorandum of even date herewith, it is, by the Court, this 21st day of February, 1978,

ORDERED, that defendants' motion to dismiss Count V of the amended complaint be, and the same hereby is, granted, and Count V of the amended complaint is therefore dismissed; and it is

FURTHER ORDERED, that defendants' motion for a protective order be, and the same hereby is, granted, without prejudice to plaintiffs' renewal of an appropriate discovery request limited to the counts remaining in the amended complaint; and it is

FURTHER ORDERED, that plaintiffs' motion to compel be, and the same hereby is, denied, without prejudice to plain-

tiffs' renewal of appropriate discovery requests limited to the counts remaining in the amended complaint; and it is

FURTHER ORDERED, that the parties shall confer in person within five (5) days of the date of this Order to identify any remaining areas of dispute with respect to the discovery requests that were the subject of the instant motions to compel and for a protective order; and it is

FURTHER ORDERED, that the parties shall file with the Court, within five (5) days after their conference, a joint memorandum that shall set forth any remaining disputed discovery matters and the parties' respective positions, along with relevant points and authorities, on such disputed matters; and it is

FURTHER ORDERED, that plaintiffs' motion for an order that certain facts be taken as established be, and the same hereby is, denied; and it is

FURTHER ORDERED, that defendants shall file amended answers to the seven disputed requests for admissions within five (5) days of the date of this Order; and it is

FURTHER ORDERED, that defendants' motion for an extension of time within which to complete discovery be, and the same hereby is, granted in part; and it is

FURTHER ORDERED, that the parties shall have 20 days from the date of this Order within which to complete all discovery in this case, and no further extensions will be granted, save for exceptional cause shown; and it is

FURTHER ORDERED, that the patries' joint motion for an extension of time within which to file summary judgment

motions be, and the same hereby is, granted, with the Court to establish a precise date for the filing of such motions after all discovery disputes herein have been resolved.

/s/ CARL MCGOWAN
Carl McGowan
United States Circuit Judge

/s/ OLIVER GASCH
Oliver Gasch
United States District Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 77-0797

CITY OF ROME, GEORGIA, et al., *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

ORDER

Filed April 4, 1979

In accordance with the opinion which will follow, and upon consideration of the entire record herein, the arguments of opposing counsel, and in the interests of justice, it is, by the Court, this 3rd day of April, 1979,

ORDERED, that plaintiff City of Rome's unopposed request for summary judgment on the transfer of voter registration to Floyd County be, and the same hereby is granted; and it is

FURTHER ORDERED, that the defendant's motion for summary judgment on Counts I, II, III & IV of plaintiffs' amended complaint be, and the same hereby is, granted; and it is

FURTHER ORDERED, that defendants' motion for summary judgment on Count VI of plaintiffs' amended complaint be, and the same hereby is, granted, without prejudice to renewal by the plaintiff City of Rome upon the completion of actions consistent with the views expressed in the accompanying opinion, namely, the elimination of the city commission residency requirement in order to obtain preclearance of the annexations; and it is

FURTHER ORDERED, that the case be dismissed without prejudice to renewal in a manner consistent with the opinion and order in this case.

/s/ CARL MCGOWAN
Carl McGowan
United States Circuit Judge

/s/ OLIVER GASCH
Oliver Gasch
United States District Judge

/s/ CHARLES R. RICHEY
Charles R. Richey
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 77-0797

CITY OF ROME, GEORGIA, et al., *Plaintiffs*,

v.

UNITED STATES OF AMERICA, et al., *Defendants*.

OPINION

Filed April 9, 1979

Robert M. Brinson, City Attorney, City of Rome, Georgia, and William E. Sumner, Atlanta, Georgia, for Plaintiffs, with whom was Joseph W. Dorn, Washington, D.C.

Paul F. Hancock, Attorney, Department of Justice, for Defendants, with whom were Drew S. Days III, Assistant Attorney General, Gerald W. Jones, Frederick J. McGrath, and Carmen L. Jones, Attorneys, Department of Justice.

Before MCGOWAN, *Circuit Judge*, and GASCH and RICHEY, *District Judges*.

MCGOWAN, *Circuit Judge*: This is a declaratory judgment action brought under the Voting Rights Act of 1965, 42 U.S.C. § 1971 *et seq.* It is before the Court on pleadings styled cross-motions for summary judgment, based on evidence developed in a stipulated record. Although the parties recognize that the record presents genuine issues of material fact, they are willing for us to resolve these issues and reach final judgment. This we have done in the following opinion, which shall constitute the Court's Findings of Fact and Conclusions of Law as required by the Federal Rules.

I.

A.

Plaintiff City of Rome (Rome or the City) is a municipality situated in Floyd County, northwestern Georgia. Its 1970 population was 30,759, of whom 23,543, or 76.6%, were white and 7,216, or 23.4%, black. Of its total 1970 voting age population, 79.4% were white and 20.6% black; as of 1975, its 13,097 registered voters were 83.9% white and 15.5% black. The City is administered by a council-manager form of government. Plaintiff Bruce Hamler is the Rome City Manager and plaintiff H. F. Hunter, Jr. is Chairman of the Rome City Commission.[1]

The basic structure of the City's government was established by a Charter enacted in 1918 by the Georgia General Assembly. The charter provided for a Commission of seven members, one from each of seven wards, elected concurrently, at large, and by plurality vote. The same Charter established a Board of Education, consisting of five members elected concurrently, at large, and by plurality vote; unlike the City Commission, however, there was no residency requirement for the Board of Education. In 1929 two additional wards were annexed to the City, making a total of nine, and seats for these wards were provided in the City Commission. Election rules, however, remained substantially unchanged.[2]

Beginning in 1966, and after the November 1, 1964 coverage date of the Voting Rights Act, the Georgia General Assembly through Charter amendment made a number of changes in Rome's election procedures. It enacted a majority vote requirement for Commission and Board of Education general and primary elections and provided for

[1] Parties' First Stipulation of Facts 1-2.

[2] *Id.* at 3-4.

the conduct and timing of runoff elections;[3] reduced the number of wards from nine to three;[4] provided that the Commission was to consist of one Commissioner from one of three numbered posts in each of three wards;[5] increased the size of the Board of Education from five to six;[6] provided that the Board of Education was to consist of one member from one of two numbered posts in each of three wards and that each candidate had to be a resident of the ward in which he ran;[7] instituted staggered terms in the Commission and Board of Education;[8] eased restrictions on voter qualifications;[9] and transferred voter registration responsibility to the County.[10] In addition to these changes in voting procedures, some sixty annexations were effected after November 1, 1964 either by state law or by local ordinance.[11]

B.

The parties have developed voluminous evidence bearing on the history and present condition of black political affairs in the City of Rome. On the City's side of the balance sheet, we find that no literacy test or other device has been employed in Rome as a prerequisite to voter registration during the past seventeen years. While registrants were technically required to pass the state literacy or char-

[3] 1966 Ga. Laws 2376; *id.* 2383; *id.* 2816-17; *id.* 3084; 1970 Ga. Laws 2563-64; *id.* 3664-65.

[4] 1966 Ga. Laws 2379-80.

[5] 1966 Ga. Laws 2375-76; *id.* 2383-84.

[6] 1966 Ga. Laws 2816.

[7] 1966 Ga. Laws 2816.

[8] 1966 Ga. Laws 2375-76; *id.* 2816-17; 1967 Ga. Laws 3296-97.

[9] 1966 Ga. Laws 3069-70.

[10] Parties' First Stipulation of Facts Ex. 24-25.

[11] *Id.* at pp. 5-6.

acter tests, the affidavits of the City officials responsible for voter registration, supported by the unanimous testimony of black deponents, are to the effect that such tests have never been applied discriminatorily and have not been administered at all in recent years.[12] Similarly, the City has not employed other barriers to registration with respect to time and place, registration personnel, purging, or reregistration.[13] Also probative of the lack of discrimination in registration is the fact that black registration remained at a relatively high level throughout the period 1963-74.[14]

---

[12] Affidavits in Support of Plaintiffs' Motion for Summary Judgment of Mrs. Ray Beard and Mrs. Helen Dowdy; Charmichael Deposition 21; Jackson Deposition 10; Aycock Deposition 7, 45; James Wright Deposition 22; Houser Deposition 8; Thomas Deposition 16-17; Moreland Deposition 48-49, 54; Joe Wright Deposition 42-43, 48; Fielder Deposition 69-71.

[13] Joe Wright Deposition 42-43, 48; James Wright Deposition 22-23; Aycock Deposition 44-45; Fielder Deposition 70; Moreland Deposition 49.

[14] Plaintiffs' Answers to Defendants' Interrogatories, Ex. 1. Plaintiffs supplied the following breakdown of total registered voters in Rome during this period:

YEAR	TOTALS BY RACE WHITE	BLACK	TOTAL REGISTERED VOTERS
1963	8097	1832	9929
1964	8313	1864	10177
1965	11241	2637	13878
1966	9182	2154	11336
1967	9532	2236	11768
1968	10585	2483	13068
1969	9906	2324	12230
1970	11081	2599	13680
1971	9969	2338	12307
1972	10481	2458	12939
1973	10080	2365	12445
1974	10610	2489	13099

Further, at least in recent years there have been no other direct barriers to black voting in Rome. Blacks have not been denied access to the ballot through the location of polling places, the actions of election officials, the treatment of illiterate voters or similar means. Nor is there any evidence of obstacles to black candidacy with respect to slating of candidates, filing fees, obstacles to qualifying, access to voters at polling places, or the like.[15] Indeed, whites, including City officials, have encouraged blacks to run for elective posts in Rome.[16] A black, Elgin Carmichael, was appointed to the Board of Education when a vacancy occurred in that body.[17]

The white elected officials of Rome, together with the white appointed City Manager, are responsive to the needs and interests of the black community.[18] The City has not discriminated against blacks in the provision of services and has made an effort to upgrade some black neighborhoods.[19] The City transit department, with a predominantly black ridership is operated through a continuing City subsidy.[20] And the racial composition of the City workforce

---

[15] Defendants' Responses to Plaintiffs' Second Request for Admission of Facts and Genuineness of Documents, Nos. 4(a), 4(b), 31.

[16] Carmichael Deposition 31; Moreland Deposition 31; Hamler Deposition 48-50; Harvey Deposition 26.

[17] Carmichael Deposition 7.

[18] *Id.* at 23-24, 30, 39-40; Fielder Deposition 56; Houser Deposition 11-14; Jackson Deposition 42-45 (noting, however, that responsiveness of City Manager was greater than that of Commissioners); Moreland Deposition 18, 40.

[19] Hamler Deposition 57-66, 76-85, 142-145; Hunter Deposition 41-44, 65, 79-81.

[20] Hamler Deposition 91-98; Wade Deposition 22-26.

approximates that of the population, with a number of blacks employed in skilled or supervisory positions.[21]

In Rome politics, the black community, if it chooses to vote as a group, can probably determine the outcome of many if not most contests.[22] Thus, many white candidates vigorously pursue the support of black voters.[23] Several present Commissioners testified that they spent proportionally more time campaigning in the black community[24] because they "needed that vote to win."[25]

On the other hand, most black voters would prefer to have a black official representing their interests.[26] Yet there has never been a black elected to political office in the City of Rome. Indeed, only four blacks have ever sought such office. Two of them, M. D. Whatley and Dr. John W. Houser, Jr., ran for the Board of Education in the 1950's and early 1960's, respectively; neither did well.[27] Another black, Samuel Stubbs, ran in the 1972 Republican primary elec-

---

[21] Hamler Deposition 98-115; Wade Deposition 32-33; Hunter Deposition 28-29; Clary Deposition 65-66.

[22] Although voters in Rome are predominantly Democrats, elections in the City are by no means a foregone conclusion; indeed, 6 of the 9 City Commissioners are Republicans, as is 1 of the 6 members of the Board of Education. Hunter Deposition 9.

[23] Clary Deposition 58-61; Hamler Deposition 44-47; Aycock Deposition 39-41; Carmichael Deposition 40; Moreland Deposition 38-39.

[24] Harvey Deposition 18-24; Hunter Deposition 14-17, 27; Wade Deposition 17-18.

[25] Wade Deposition 18; *see* Harvey Deposition 20.

[26] Carmichael Deposition 12; Aycock Deposition 53, 75-76; Jackson Deposition 11; James Wright Deposition 51-53; Joe Wright Deposition 20-21; Fielder Deposition 50.

[27] Aycock Deposition 9-10; Carmichael Deposition 13; Fielder Deposition 17; Houser Deposition 4-6, 10-11, 21; James Wright Deposition 36, 54-55.

tion for City Commission, and received only 79 votes out of the 276 cast.[28]

By far the strongest black candidate in Rome's history was Rev. Clyde Hill, who ran for the Board of Education in 1970 under the numbered-post, residency ward, majority-win system instituted in 1966.[29] Rev. Hill ran a vigorous campaign against three white opponents, and, with the strong support of the black community, received a plurality of the votes cast in the general election.[30] Because he did not receive a majority, however, he was forced into a run-off election with the runner-up and was defeated.[31]

In the years since the failure of Rev. Hill's candidacy, the black community in Rome has been politically apathetic.[32] It is widely believed among blacks that a black will never be elected to public office in Rome as long as the present majority-win system remains in effect.[33] A number

---

[28] Stubbs Deposition 4; Parties' First Stipulation of Facts, Ex. 32.

[29] Hill Deposition 12-13.

[30] *Id.* at 17-18; Joe Wright Deposition 9-13; Aycock Deposition 16; James Wright Deposition 12; Moreland Deposition 10-12. Hill received 921 votes, as against 909 for Dr. Sara L. Hoyt, 407 for Jean V. Anderson, and 143 for Rev. Warren L. Jones. Parties' First Stipulation of Facts, Ex. 28.

[31] Dr. Hoyt received 1409 votes in the runoff election as compared with 1142 for Rev. Hill. Parties' First Stipulation of Facts, Ex. 29.

[32] Hill Deposition 31; Jackson Deposition 11. Rev. Hill's defeat in the runoff, after his seeming victory in the general election, came as a bitter disappointment to many in the black community. In the words of one deponent, it "killed a political dream of the people," so that young blacks particularly "have no faith in the political process here in the City of Rome." Moreland Deposition 12, 6.

[33] Hill Deposition 23, 30; Joe Wright Deposition 15-16; Aycock Deposition 24; James Wright Deposition 13; Thomas Deposition

of qualified blacks will not run for office because in their judgment they could not get a majority of the votes.[34]

Underlying this perception in the black community is a belief that bloc voting by race exists in the City of Rome. Racial bloc voting is a situation where, when candidates of different races are running for the same office, the voters will by and large vote for the candidate of their own race.[35] Unfortunately, a statistical demonstration of the existence *vel non* of racial bloc voting is impossible in the present case.[36] There is, however, other evidence of record proba-

---

11-12; Moreland Deposition 14-15; Jackson Deposition 25. This conclusion was disputed by white City officials. Hunter Deposition 71, 78; Hamler Deposition 138-139; Wade Deposition 19.

[34] James Wright Deposition 14; Fielder Deposition 26; Joe Wright Deposition 14; Carmichael Deposition 14; Hill Deposition 31.

[35] The Supreme Court has recognized the existence of racial bloc voting and its effect on the minority race within the district:

> Where it occurs, voting for or against a candidate because of his race is an unfortunate practice. But it is not rare; and in any district where it regularly happens, it is unlikely that any candidate will be elected who is a member of the race that is in the minority in that district.

United Jewish Organizations v. Carey, 430 U.S. 144, 166-67 (1977) (plurality opinion).

[36] The surest method of demonstrating racial bloc voting is to analyze the results, broken down into a number of districts of differing racial makeup, of an election in which a white candidate is pitted against a black one. If there is a positive correlation in a sufficient number of districts between voters of one race and the percentage of votes received by the candidate of that race, then it can be inferred that racial bloc voting has occurred. Stated more impressionistically, if District A is 80% white, and the white candidate receives 80% of the vote, and District B is 80% black, and the black candidate receives 80% of the vote, it is a ready inference that white voters voted for the white candidate and blacks for the black. For a clear example of this type of statistical

tive of the existence of racial bloc voting.

First, the virtually unanimous testimony of black deponents was that, given a choice, voters in Rome will tend to vote for the candidate of their own race.[37] However, some deponents also opined that a given black candidate could pick up significant white support, although not enough to win.[38] White officials, on the other hand, unanimously testified that racial bloc voting does not exist in Rome.[39] Much of this opinion testimony, of course, is based on inferences drawn from the results in previous elections, particularly that involving Rev. Hill—facts which more effectively speak for themselves. However, the testimony would also appear to reflect inferences drawn from these long-time residents' knowledge of the racial atmosphere in

---

demonstration, *see* City of Petersburg v. United States, 354 F. Supp. 1021, 1026 n.10 (D.D.C. 1972), *aff'd*, 410 U.S. 962 (1973).

This type of analysis is impossible in Rome's case because, of the four races in which blacks ran against whites, two—those of M.D. Whatley and Dr. John W. Houser—occurred many years ago and apparently no records have survived, one—that of Samuel Stubbs—did not involve a sufficient number of votes, and one—that of Rev. Hill—could not be broken down by district. *See* Loewen Deposition 61-62.

[37] Aycock Deposition 20; James Wright Deposition 8; Moreland Deposition 10; Carmichael Deposition 11; *but see* Houser Deposition 17. Of course, the existence of bloc voting is the obvious, if sometimes unstated, premise upon which numerous deponents based their conclusion that no black could win an election in Rome. *See* note 34 *supra*.

[38] Carmichael Deposition 15; Jackson Deposition 55. Rev. Hill testified that he received considerable white support during his campaign, including financial contributions and printing services donated by a white-owned business. Hill Deposition 28, 36.

[39] Harvey Deposition 65; Hunter Deposition 17-18, 75; Wade Deposition 12-13, 39-49, 53; Clary Deposition 59-60, 81-85; Hamler Deposition 120-121, 159-161; Harry Johnson Affidavit.

Rome.[40] *See* Fed. R. Evid. 701. To this extent, the inference that bloc voting does exist is the more credible and rational one, because the white officials testifying to the contrary are "interested witness[es]," *see City of Richmond v. United States*, 422 U.S. 358, 377 (1975), because a belief in racial bloc voting was the predicate for decisions by a number of black deponents not to run for elective office, and because other relevant evidence interacts with and supports the conclusion that a substantial degree of racial bloc voting exists.

Rev. Hill's campaign is perhaps the clearest indication of the extent of racial bloc voting in Rome. With the solid support of the black community, Rev. Hill, as we have noted, achieved a plurality of the votes cast in the general election. In his losing runoff campaign, however, he picked up only 221 additional votes while his opponent gained 500. Moreover, although a lower turnout might have been expected for a runoff election involving a single Board of Education seat, 171 more votes were cast in the runoff than in the general election.[41] The most reasonable explanation for these results is that the white community, confronted with the imminent prospect of a black being elected, coalesced to defeat Rev. Hill. At the same time, it is probable that Rev. Hill did receive a sizable number of white votes. Even assuming that Rev. Hill's vigorous campaign impelled an unprecedented number of blacks to the polls, this factor alone probably cannot account for his 45% runoff tally in a town of roughly 15% black registration.

Finally, Dr. James W. Loewen, a political sociologist, testified as an expert witness that racial bloc voting existed in Floyd County during the 1968 Democratic United States Senate primary between Herman Talmadge and Maynard Jackson. Dr. Loewen concluded that at a mini-

[40] *E.g.*, Carmichael Deposition 14.

[41] *See* notes 30-31 *supra*.

mum 88.9% of the whites in Floyd County voted white and approximately 76.2% of the blacks voted black.[42] The value of this testimony, of course, must be discounted by the fact that the Jackson-Talmadge race involved state and national rather than local issues, occurred more than a decade ago, and was analyzed on a county-wide rather than city-wide basis. Nevertheless, despite these cautionary factors, Dr. Loewen's testimony is probative of the existence of racial bloc voting in Rome. Taking these three strands of evidence together—the testimony of black deponents, the results of Rev. Hill's campaign and the conclusions of the expert witness—we find that a substantial measure of racial bloc voting does exist in the City of Rome.

C.

The present litigation was seeded on June 15, 1974, when the City submitted an annexation to the Attorney General for approval pursuant to section 5 of the Voting Rights Act.[43]

[42] Loewen Deposition 15.

[43] Section 5 of the Act, 42 U.S.C. § 1973c, provides that:

> Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence

(Footnote 43 Continued)

of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

The State of Georgia has been designated a covered subdivision pursuant to § 4 of the Act, 30 Fed. Reg. 9897 (1965), and its municipalities are required to comply with § 5, United States v. Board of Commissioners (Sheffield), 435 U.S. 110 (1978).

As a result of his investigation,[44] the Attorney General discovered that the other annexations and voting changes described above, *see* text accompanying notes 3-11 *supra,* had not been submitted for preclearance either to him or to this Court as required by section 5.[45] Eventually, Rome submitted all but one of these changes to the Attorney General for preclearance.[46] During the course of the administrative proceedings the Attorney General failed to object or withdrew his objections to, and thereby precleared, the following: (1) 47 of the 60 annexations; (2) the reduction in wards from 9 to 3; (3) the increase in size

---

[44] On July 24, 1974, the Attorney General requested additional information regarding the submitted annexation, as well as disclosure regarding any other City annexations occurring since the effective date of § 5. Rome responded on Feb. 10, 1975, by submitting 59 additional annexations for preclearance. On March 6, 1975, the Attorney General requested further information regarding the annexations and asked the City whether there had been any changes in its electoral system since the effective date of § 5. Rome responded on June 2, 1975, supplying further information as to the annexations and confirming for the first time the existence of numerous changes in its voting rules. As a result of this disclosure, the Attorney General on August 1, 1975 interposed a technical objection to the annexations. On August 21, 1975, the City finally submitted its electoral changes for preclearance. *See* Second Supplement to Parties' Stipulation of Facts, Ex. 45.

[45] The voting changes at issue in this case are no doubt within the purview of § 5, Georgia v. United States, 411 U.S. 526 (1973); Allen v. State Bd. of Elections, 393 U.S. 544 (1969), as are the annexations insofar as they affect voting, City of Richmond v. United States, 422 U.S. 358 (1975); Perkins v. Matthews, 400 U.S. 379 (1971); City of Petersburg v. United States, 354 F.Supp. 1021 (D.D.C. 1972), *aff'd,* 410 U.S. 962 (1973). *See also* Dougherty County Bd. of Educ. v. White, 99 S.Ct. 368 (1978).

[46] The sole change not submitted to the Attorney General was the transfer of voter registration responsibility to Floyd County, which Rome has submitted directly to this Court pursuant to § 5. Because the Attorney General has not apposed preclearance, we grant the City's request for summary judgment as to this change.

of the Board of Education from 5 to 6; and (4) the easing of restrictions on voter qualifications. The Attorney General did object, however, to (1) 12 annexations, insofar as they relate to City Commission elections; (2) (a) majority vote, (b) runoff,[47] (c) numbered post, and (d) staggered term provisions for City Commission and Board of Education elections; and (3) the residency requirement for Board of Education elections.[48]

After the Attorney General refused to reconsider his decision, plaintiffs filed the present lawsuit. During the course of the litigation, two of plaintiffs' claims (Counts I and V of their amended complaint) were eliminated,[49] and the remaining issues are essentially four in number. Plaintiffs contend that Rome is entitled to "bailout" from coverage pursuant to section 4 of the Act (Count II); that some or all of the objected-to changes have already been administratively precleared (Count III); that section 5 is unconstitutional (Count IV); and that the disputed changes have neither the purpose nor the effect of denying or abridging the right to vote on the basis of race or color (Count IV). The first three of these are either pure questions of law or issues as to which the facts are undisputed,

[47] The Attorney General did not explicitly object to the runoff provisions. However, his objection to the majority vote requirements implicitly included the runoff provisions because the latter would be surplusage in a plurality-win system.

[48] Parties' First Stiplation of Facts 8-11.

[49] Count V of plaintiffs' amended complaint charged that the Attorney General had acted unconstitutionally in applying § 5 to the City of Rome. Relying on Morris v. Gresette, 432 U.S. 491 (1977) and Briscoe v. Bell, 432 U.S. 404 (1977), the Court dismissed this count on Feb. 22, 1978. City of Rome v. United States, 450 F.Supp. 378 (D.D.C. 1978).

Count I of the amended complaint charged that Rome was not a jurisdiction subject to § 5. Plaintiffs concede that this issue was decided adversely to them in the *Sheffield* case, United States v. Board of Commissioners, 435 U.S. 110 (1978).

and are therefore appropriately disposed of on summary judgment. The fourth question does involve genuine issues of material fact, but because, as we have noted, the parties are willing for us to reach a judgment based on the stipulated record, we make Findings of Fact and Conclusions of Law on this count also.

As an initial matter, the City seeks to "bail-out" from section 5's coverage by invoking the declaratory judgment procedure of section 4(a). Under the structure of the Act, the jurisdictions subject to section 5's preclearance procedures are those "with respect to which the prohibitions set forth in [section 4(a)] are in effect."[50] Section 4(a),[51] in turn, prohibits the use of tests or devices[52] as prerequi-

[50] *See* note 43 *supra*.

[51] The relevant portion of § 4(a), 42 U.S.C. § 1973b(a), provides that

> To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

[52] Section 4(c), 42 U.S.C. § 1973b(c), defines "test or device" to mean

> any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrates the ability to read,

sites to voting (1) "in any State" which the Attorney General has determined to fall within the coverage formulae of section 4(b) [53] or (2) in "any political subdivision with respect to which such determinations have been made as a separate unit." However, section 4(a) further provides that "such State or subdivision may exempt itself—or, as it is sometimes called, "bail-out"—from these prohibitions by bringing a declaratory judgment action before this Court and establishing that "no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color." The statutory circle is completed with reference back to section 5: if a jurisdiction succeeds in its bail-out action, the prohibitions of section 4(a) are no longer effective and therefore the jurisdiction is not subject to section 5 preclearance.

The issue of whether municipalities in covered states may independently seek to bail-out is apparently one of first

---

write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

[53] Section 4(b), 42 U.S.C. § 1973b(b), provides in pertinent part

"The provisions of [§ 4(a)] shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964."

As we have noted, the Attorney General has determined Georgia to be a covered jurisdiction. *See* note 43 *supra*.

impression.[54] In arguing its entitlement to such a remedy, the City lays great stress on the recent *Sheffield* decision, *United States v. Board of Commissioners*, 435 U.S. 110 (1978), in which the Supreme Court held that when an entire state is subject to the Act, its political subunits must comply with section 5 even though they may not be "political subdivision[s]" as that term is defined in section 14(c)(2) of the Act.[55] The Supreme Court reaffirmed the *Sheffield* holding, after argument in the present case, in *Dougherty County Board of Education v. White*, 99 S.Ct. 368, 375-77 (1978). Rome argues that if municipalities are now to be subject to section 5, it would be anomalous and unfair if they are not permitted to bail-out from the Act's coverage under section 4(a).

In statutory terms, the issue is whether Rome is a "State" or "[political] subdivision" within the meaning of section 4(a). Rome argues that in light of *Sheffield*, it must be considered a "political subdivision" for purposes of section 5 and, by implication, section 4. We see little merit to this position. *Sheffield* did *not* hold that municipalities within covered states are "political subdivision[s]"; quite to the contrary, the Court concluded that

---

[54] Judge Gasch addressed this quetsion in his concurring opinion in Gaston County v. United States, 288 F.Supp. 678, 691 (D.D.C. 1968), *aff'd*, 395 U.S. 285 (1969). His conclusion comports with that we reach herein: "No subdivision or part of an area that has been certified can come out alone; each certified unit must petition this Court for relief as a whole." The issue was not squarely presented in *Gaston County*, however, because that case involved a bail-out action brought by a county in a state which, unlike Georgia, had not been certified as subject to § 5.

[55] Section 14(c)(2), 42 U.S.C. § 1973*l*(c)(2), provides that

"Political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

"where . . . a State has been designated for coverage, the meaning of the term 'political subdivision' has no operative significance in determining the reach of § 5: the only question is the meaning of '[designated] State' ". 435 U.S. at 126. Moreover, even if Rome were considered a "political subdivision" its cause would not be furthered. The section 4(a) bail-out remedy applies, not to all subdivisions, but only to those the Attorney General has determined to be covered *"as a separate unit"*—an event which has not occurred in Rome's case.

Although Rome is clearly not a "political subdivision" for purposes of section 4(a), a stronger argument can be made that, under *Sheffield,* it is a "State" within the meaning of that section. The Court in *Sheffield* interpreted section 4(a)'s prohibition of tests or devices "in any State" to import a geographical reach. It then inferred that in light of the close connection between sections 4 and 5, the "State[s]" required to seek judicial or administrative preclearance for voting changes under section 5 included not only covered States themselves but also all subsidiary political units within their borders. By like reasoning, it would seem that the "State[s]" entitled to bring section 4(a) bail-out actions should also include political subunits within covered states. Hence, it could be argued, Rome, considered as a "state," should be entitled to its bail-out action here.

Despite the abstract force of this approach, we are unwilling to use logic as a means of subverting congressional intent. *See Philbrook v. Glodgett,* 421 U.S. 707, 713 (1975); *United States v. American Trucking Associations,* 310 U.S. 534, 542-44 (1940). And the intent of Congress in the present case is crystal clear. The House Report on the bill that became the Voting Rights Act explicitly rejected Rome's theory: "[The] opportunity to obtain exemption is afforded only to those States or to those subdivisions as to which the formula has been determined to apply as a

separate unit; *subdivisions within a State which is covered by the formula are not afforded the opportunity for separate exemption."* H.R. REP. No. 439, 89th Cong., 1st Sess. 14 (1965) (emphasis added) [hereinafter cited as H.R. REP.]. The same point was made by 12 members of the Senate Committee expressing their joint individual views: "We are also of the view that an entire State covered by the test and device prohibition of section 4 must be able to lift the prohibition if any part of it is to be relieved from the requirements of section 4." S.REP. No. 162, Pt. 3, 89th Cong., 1st Sess. 16 (1965) [hereinafter cited as S.REP.]; *see also id.* at 21.

Moreover, the construction urged upon us by the City could well lead to many of the same evils whose existence in 1965 prompted passage of the Voting Rights Act. Congress was aware that existing legislation had not succeeded in implementing the Fifteenth Amendment and eliminating the blight of racial discrimination in voting. Efforts to accomplish these goals through case-by-case adjudication had proved ineffective because they were "onerous to prepare" and "exceedingly slow" to produce results. *South Carolina v. Katzenbach,* 383 U.S. 301, 314 (1966). And even when litigation was successful, some of the affected jurisdictions "merely switched to discriminatory devices not covered by federal decrees." *Id.* To combat these twin evils of burdensome case-by-case litigation and persistent "obstructionist tactics" by the affected jurisdictions, Congress enacted a series of stern measures, including section 5, to "shift the advantage of time and inertia from the perpetrators of the evil to its victims." *Id.* at 328.

Permitting political subunits of covered states to bail-out alone would, we believe, subvert the purposes of section 5 by opening the door to a resurgence of these same evils. It would impose a potentially severe administrative burden on the Attorney General by forcing him to defend numerous bail-out suits brought by political subunits. As noted

in the House Report, "to permit each such subdivision to litigate the [bail-out] issue . . . would impose a continuation of the burdensome county-by-county litigation approach which has been shown to be inadequate." H.R.REP., *supra*, at 14.

Even more troublesome is the possibility that covered States could circumvent the purposes of the Act simply by causing their sub-jurisdictions that have successfully pursued a bail-out remedy to engage in discriminatory practices.[56] In the words of the Senate Committee members, "in most of the States affected by section 4 local boards of registration are so closely and directly controlled by and subject to the direction of State boards of education—and, indeed, the State legislature—that they would be required to misapply tests and devices, irrespective of their own inclinations, if this suited the general policy of the State government." S.REP., *supra*, at 16. Similar considerations were a motivating factor in the *Sheffield* and *Dougherty County* cases. The Court observed that exempting municipalities from section 5 "would invite States to circumvent the Act . . . by allowing local entities that do not conduct voter registration to control critical aspects of the electoral process." *Sheffield, supra*, 435 U.S. at 125; *accord, Dougherty County, supra*, 99 S.Ct. at 375.

[56] Although a covered state would have to submit for § 5 preclearance any legislation transferring voting authority to local jurisdictions, we do not believe that this requirement is sufficient to prevent circumvention of the Act. For one thing, to the extent that a political subunit possesses authority under existing state law to implement potentially discriminatory voting changes, no § 5 preclearance would be required of the state. *Beer v. United States*, 425 U.S. 130 (1976). Secondly, even when a § 5 submission is required, it is likely that the Attorney General or this Court would grant preclearance because a transfer of voting authority is nondiscriminatory on its face.

In sum, then, we conclude that despite any logical inference that might be drawn from *Sheffield*, the reasoning of that case coupled with the legislative history and overarching purposes of the Voting Rights Act compel the conclusion that political subunits of a covered state cannot independently bring a section 4(a) bail-out action.

III.

A.

The City next argues that certain of its election rules, namely the majority vote, runoff election, and numbered post provisions, have in fact already been precleared by the Attorney General. As we have noted, *see* text accompanying notes 3-11 *supra*, these provisions were adopted as part of Rome's Charter in 1966. In 1968, the State of Georgia enacted a comprehensive Municipal Election Code (1968 Code), submitted it to the Attorney General, and obtained preclearance thereof. Rome argues that the Attorney General, in preclearing the 1968 Code, thereby approved by reference the City's 1966 Charter amendments.

The 1968 Code provided that if a municipality's charter or ordinance, "as now existing or as amended subsequent to the effective date of this subsection," called for plurality voting, that provision would be effective. If the local legislation did not call for plurality voting, the 1968 Code required majority voting and runoff elections.[57] Rome argues

[57] With respect to majority voting, the 1968 Code provided in pertinent part:

> If the municipal charter or ordinance, as now existing or as amended subsequent to the effective date of this Subsection, provides that a candidate may be nominated or elected by a plurality of the votes cast . . ., such provision shall prevail. Otherwise, no candidate shall be nominated for public office

that its Charter, having been amended in 1966 to provide for majority voting, did not provide for plurality voting in 1968, and that therefore the 1968 Code mandated majority voting and runoff elections. Similarly, the 1968 Code provided that "charter or ordinance provisions now in effect or hereinafter enacted shall govern" whether numbered posts would be used.[58] Rome urges that because the Charter provision "in effect" in 1968 was the 1966 amendment creating numbered posts, the 1968 Code imposed or ratified a numbered post requirement. Therefore, in Rome's view, the granting of preclearance to the 1968 Code constituted preclearance to the majority vote, numbered post and runoff election provisions of the City Charter.

The Supreme Court has twice addressed the question of what constitutes a "submission" of a voting change

---

in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast. . . .

Ga. Code § 34A-1407(a).

With respect to runoff elections, the 1968 Code provided, in pertinent part

In instances where no candidate receives a majority of the votes cast and the municipal charter or ordinance does not provide for nomination or election by plurality vote, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes.

Id. § 34A-1407(b).

[58] The 1968 Code provided, in pertinent part:

In the case of a candidate seeking one of two or more public offices each having the same title and to be filled at the same election by the vote of the same electors, charter or ordinance provisions now in effect or hereinafter enacted shall govern whether such candidate shall designate the specific office he is seeking.

Ga. Code § 34A-902.

for purposes of section 5. In *Allen v. State Board of Elections*, 393 U.S. 544 (1969), it rejected the argument that a submission occurred whenever the Attorney General became aware of a particular state enactment. In the Court's view, it was necessary that the submitting jurisdiction "in some unambiguous and recordable manner submit any legislation or regulation in question directly to the Attorney General with a request for his consideration pursuant to the Act." 393 U.S. at 571. In *Sheffield, supra*, the Attorney General precleared a city's proposal to hold a referendum on the question of whether to switch from a commission to a mayor-council form of government. He objected, however, to the result of the referendum, in which the voters approved the proposed change. The Court rejected the argument that in approving the referendum the Attorney General also approved the change in form of government, stating that "the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." 435 U.S. at 136.

We think *Allen* and *Sheffield* compel rejection of the City's theory. Georgia, in our view, submitted to the Attorney General only its decision to defer to local charters and ordinances regarding majority voting, runoff elections, and numbered posts, and, possibly, its expression of a general policy in favor of majority voting. It did not, however, submit in an "unambiguous and recordable manner" all municipal charter provisions, as written in 1968 or as amended thereafter, regarding these issues. To be sure, the Attorney General could have inferred from the submission that some municipalities had recently adopted or planned to adopt such rules. But the Court in *Sheffield* rejected the theory that voting changes are to be deemed submitted merely because an earlier submission renders the occurrence of these changes very likly. Just as in *Sheffield* the submission of a decision to hold a refer-

endum did not incorporate by reference the results of that referendum, so, here, submission of state laws authorizing municipalities to adopt certain provisions in their charters does not constitute submission of the actual exercise of this authority by local governments. We might add, finally, that Rome has even less claim to have submitted its voting changes than did the litigants in *Allen* and *Sheffield,* since in the earlier cases the Attorney General was at least made aware of the changes at issue, whereas here, due to Rome's delay in submitting its 1966 Charter amendments, the Attorney General had never been given notice, as of 1968, that these changes had even taken place.[59]

B.

The City raises a second argument that its voting changes have been administratively precleared, this time focusing on the Attorney General's actions in 1976. Rome sought reconsideration of the Attorney General's objection to its electoral changes and annexations on May 24, 1976. On July 14, 1976, before the Attorney General had responded, the City supplemented its request with two additional affidavits. On August 12, 1976, the Attorney General declined to withdraw his objection.[60]

The Attorney General has by regulation provided that requests for reconsideration shall be acted upon within

[59] Because we hold that Rome's election changes were never "submitted" to the Attorney General in 1968, we find it unnecessary to reach the Government's argument that the changes were not precleared because, not having been submitted for preclearance immediately after their adoption in 1966 as required by the Act, they were unenforceable and, in effect, void as of the date the Georgia Municipal Election Code was submitted.

[60] Second Supplement to Parties' Stipulation of Facts, Ex. 45.

60 days of their receipt. 28 C.F.R. § 51.3(d) (1978).[61] *See generally Georgia v. United States,* 411 U.S. 526, 536-41 (1973). Rome computes the 60 days as running continuously from May 24, the date of the initial request for reconsideration, in which case the period would have expired prior to the Attorney General's response on August 12. The Government, on the other hand, computes the period as running from July 14, the date Rome supplemented its request, in which case the response was timely.[62]

We agree with the Government that the time period commenced anew when Rome supplemented its request on July 14. In the analogous situation of an original submission, the Government has the power to request additional information and, in its unreviewable discretion, *Morris v. Gresette,* 432 U.S. 491 (1977), to delay commencement of the 60-day period until the information is received if it believes the initial submission is unsatisfactory. 28 C.F.R. § 51.18(a).[63] When additional information is supplied at

[61] This section provides:

> When the Attorney General objects to a submitted change affecting voting, and the submitting authority seeking reconsideration of the objection brings additional information to the attention of the Attorney General, the Attorney General shall decide within 60 days of receipt of a request for reconsideration (provided that he shall have at least 15 days following a conference held at the submitting authority's request) whether to withdraw or to continue his objection.

[62] The Government also contends that the 60-day period of § 51.3 (d) is merely a goal rather than a binding commitment. While we need not decide this issue here, we do note that the language of § 51.3(d) is mandatory rather than permissive and that it tracks the time requirement for responses to initial submissions, which is statutorily binding on the Attorney General. *See also* note 63 *infra.*

[63] The City stresses the proviso in § 51.13(d), *see* note 61 *supra,* tolling the period for at least 15 days following a conference held at the submitting authority's request. We agree that this proviso supports the argument that the 60-day period is binding on the

the initiation of the submitting jurisdiction rather than the Government, there is even more reason to view the period as commencing anew from the time of receipt.[64] We conclude, therefore, that the Attorney General has not precleared the voting changes at issue in this case.[65]

IV.

The plaintiffs next raise a congeries of arguments challenging the constitutionality of section 5 of the Voting Rights Act. They attack that section as being (1) beyond

---

Government, *see* note 62 *supra*, because if the period were merely advisory, the Government would not have felt the need explicitly to exempt itself in one special situation. We do not find, however, that this proviso is the *exclusive* means of tolling the period. Because the regulations are silent on the effect of supplements to requests for reconsideration, we are free to treat this situation in the way that most comports with the purposes of the Act and its implementing regulations.

Further, we do not find that the City's submission of additional affidavits constituted a "conference" within the meaning of the proviso.

[64] If we were empowered to review the merits of the Attorney General's decisions under § 5, we might be inclined to find that he had ample opportunity to respond within 60 days of the initial submission. The City's brief supplemental affidavits were hardly of a nature to impose a significant additional burden on the Attorney General. However, under the teachings of *Briscoe v. Bell*, 432 U.S. 404 (1977) and *Morris v. Gresette*, 432 U.S. 491 (1977), we are unwilling to second-guess the Attorney General on an issue implicating his unreviewable judgment of the merits of a § 5 application.

[65] We cannot help observing, too, that the City's hands are not scrupulously clean when it comes to timeliness. Rome took nearly a decade to submit any of its voting changes to the Attorney General. When asked for further information, it waited nearly seven months to respond. And it took more than a year to complete its submission after first setting the process in motion. *See* note 44 and accompanying text *supra*.

the power of Congress under the Fifteenth Amendment; (2) an infringement of the rights reserved to the states under the Tenth Amendment; (3) a violation of the Guarantee Clause; and (4) an infringement of the rights of the private plaintiffs under various constitutional provisions.

We are bound to note, at the outset, that in asking this Court to declare section 5 unconstitutional, the plaintiffs summon us to a life of high adventure. For we could not do as the plaintiffs ask without overruling or ignoring unequivocal and repeated holdings by the Supreme Court of the United States. In *South Carolina v. Katzenbach*, the Court held that section 5, together with certain other provisions of the Act, is "an appropriate means for carrying out Congress' constitutional responsibilities and [is] *consonant with all other provisions of the Constitution.*" 383 U.S. 301, 308 (1966) (emphasis supplied). Far from backing away from *Katzenbach*, the Court has in the ensuing years often cited that case with approval. *See United Jewish Organizations v. Carey*, 430 U.S. 144, 157 (1977) (plurality opinion); *id.* at 180 n. * (Stewart, J., concurring in the judgment); *Beer v. United States*, 425 U.S. 130, 133 (1976); *Georgia v. United States*, 411 U.S. 526, 535 (1973); *Allen v. State Board of Elections*, 393 U.S. 544, 548 (1969). *Accord, Wilkes County v. United States*, 450 F. Supp. 1171, 1177 (D.D.C.), *aff'd*, 99 S.Ct. 606 (1978).

It is true, as plaintiffs point out, that this impressive line of cases has not been without an undercurrent of dissent or at least unrest. Justice Black, the only member of the Court not to join the opinion in *Katzenbach*, believed that section 5's preclearance procedure "so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless." *Katzenbach, supra*, 383 U.S. at 358 (Black, J., concurring and dissenting); *see also Allen, supra*, 393 U.S. at 595-97 (Black, J., dissenting); *Perkins v. Matthews*, 400 U.S. 379, 401-07 (Black,

J., dissenting). Other Justices have also expressed misgivings. *See Georgia v. United States, supra,* 411 U.S. at 545 (Powell, J., dissenting); *Holt v. City of Richmond,* 406 U.S. 903 (1972) (Burger, C.J., concurring); *Allen, supra,* 393 U.S. at 586 & n.4 (Harlan, J., concurring and dissenting).

Further, it is undeniably true, as plaintiffs urge, that the constitutional climate has changed considerably since the *Katzenbach* decision. Of particular relevance to the present case, the Supreme Court in *National League of Cities v. Usery,* 426 U.S. 833 (1976), revivified the principles of federalism embodied in the Tenth Amendment. Federalism concerns have also played a prominent role in other recent cases, *e.g., Francis v. Henderson,* 425 U.S. 536 (1976); *Rizzo v. Goode,* 423 U.S. 362 (1976). And in a separate line of cases, the Court has held that the equal protection components of the Fifth and Fourteenth Amendments condemn only purposeful discrimination, not actions discriminatory in effect but not in intent. *Village of Arlington Heights v. Metropolitan Housing Development Corp.,* 429 U.S. 252 (1976); *Washington v. Davis,* 426 U.S. 229 (1976). Plaintiffs argue that, were the Court to reconsider the constitutionality of section 5 in light of these other cases, it would strike that provision down.

As a federal District Court, however, we should be slow indeed to disobey an explicit command of the Supreme Court absent compelling indications that the Court has now changed its mind. And we do not find such indications in the present case. To the contrary, our best estimate is that, were the Court writing on a clean slate today, it would affirm the constitutionality of section 5 much as it did in *Katzenbach* 13 years ago.

Before reaching the merits, however, we must dispose of a question going to our jurisdiction which, although not raised by the parties, we are obligated to decide *sua sponte.* The jurisdiction of this 3-judge District Court is

established, for present purposes, in section 5 of the Act.[66] The cause of action over which jurisdiction is in terms conferred by section 5 is restricted to preclearance actions, and the only parties explicitly authorized to bring such actions are covered jurisdictions. The claims we consider in the present section are, however, constitutional challenges to the Act, some of them brought by private parties rather than the City. We are doubtful that this Court has statutory jurisdiction over such claims.[67]

Despite these doubts, we find we can take jurisdiction over the claims on a pendant jurisdiction theory. The constitutional and Voting Rights Act claims arise from a "common nucleus of operative fact," *United Mine Workers v. Gibbs,* 383 U.S. 715, 725 (1966), and the interests of judicial efficiency call for their resolution in a single proceeding. Moreover, we do not perceive in section 5 any congressional intent to preclude our taking jurisdiction either over the City's constitutional assertions or over the claims of the private plaintiffs as to whom Congress has not extended the section 5 cause of action.[68] *See Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365 (1978); *Adlinger v. Howard,* 427 U.S. 1 (1976). We therefore see

---

[66] Section 4(a) also grants this Court jurisdiction to hear bail-out actions such as that brought by the City as part of this lawsuit. Section 4(a), however, obviously does not grant jurisdiction over challenges to the constitutionality of § 5.

[67] It may be, of course, that a single-judge federal District Court would have jurisdiction to consider these claims under some other provision, such as 28 U.S.C. § 1331.

[68] Although the City of Rome purports to bring suit as the *parens patriae* of its private citizens, it has been settled since *South Carolina v. Katzenbach, supra,* 383 U.S. at 324, that no state or municipal government can sue the federal government in a *parens patriae* capacity. The claims of the private parties must therefore be viewed as brought in their individual capacities only.

no reason not to take jurisdiction over all the constitutional claims.

A.

Plaintiffs first argue that Congress simply had no power to prevent a state or local jurisdiction from implementing voting changes which, although not motivated by racial animus, nevertheless have the effect of diluting black voting strength.[69] Section 5 of the Voting Rights Act in terms requires a covered jurisdiction to demonstrate the absence of discrimination both in purpose and in effect. *See* note 43 *supra*. However, the Fifteenth Amendment, which is the source of Congress' power to enact section 5,[70] in plaintiffs' view outlaws only *purposeful* discrimination. Therefore, they argue, Congress acted beyond its constitutional powers insofar as it purported to proscribe voting changes discriminatory in *effect* only.[71]

---

[69] We would, of course, have no occasion to reach this issue were we to find that all the voting changes in question resulted from purposeful discrimination. As we discuss in Part V, however, we conclude that these changes are discriminatory in effect but not in purpose. Rome's argument is thus squarely presented for decision on the facts of this case.

[70] Congress undoubtedly intended to exercise its Fifteenth Amendment powers in enacting § 5. *E.g.*, South Carolina v. Katzenbach, *supra*, 383 U.S. at 308. It is not certain whether § 5 could be sustained under some other constitutional power. *Compare* Allen v. State Bd. of Educ., 393 U.S. at 588-89 (Harlan, J., concurring and dissenting) *with* Katzenbach v. Morgan, 384 U.S. 641, 646-47 n.5 (1966). In light of our holding herein, we do not address the latter question.

[71] Section 5 goes beyond the Fifteenth Amendment in another sense also. While in litigation brought directly under the Fifteenth Amendment the burden is on the party challenging a voting practice to show discrimination, under § 5 the burden shifts to the practice's proponent to show the absence of discrimination. South Carolina v. Katzenbach, *supra*, 383 U.S. at 335; cases cited at note 80 *infra*. Plaintiffs do not challenge this shifting of the burden of proof.

Whether the Fifteenth Amendment reaches only purposeful discrimination is an important and unsettled constitutional question. The Supreme Court, in *Arlington Heights* and *Washington v. Davis, supra,* may have intimated an answer when it held that the equal protection components of the Fifth and Fourteenth Amendments reach only purposeful discrimination.[72] A panel of the Fifth Circuit has recently held, largely on the basis of these cases, that the Fifteenth Amendment reaches only purposeful discrimination. *Nevett v. Sides,* 571 F.2d 209 (5th Cir. 1978). The Supreme Court, however, has never explicitly addressed the question.[73] And as Judge Wisdom pointed out, specially concurring in *Nevett, id.* at 231, despite their close historical connections there are important structural differences between the Amendments: the Fifteenth Amendment would not appear as firmly grounded on a core idea of intentional discrimination and, being far more restricted in scope, does not present as compelling a case for a limiting construction. Moreover, as Judge Wisdom noted, the special character of the franchise, which is "a fundamental political right, because preservative of all rights," *Yick Wo v. Hopkins,* 118 U.S. 356, 370 (1886),

---

[72] *See also* Duren v. Missouri, 99 S. Ct. 664, 670 n. 26 (1978) (dictum that *both* purpose *and* effect are necessary to an equal protection violation). *Cf.* Mount Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) (first amendment).

[73] Justice Marshall, dissenting in Beer v. United States, *supra,* 425 U.S. at 148-149 n.4, identified three possible approaches to the purpose/effect question, each one of which, as he read the cases, has been adopted by the Court at one time or another in recent years:

> The possible theoretical approaches are three: (1) purpose alone is the test of unconstitutionality, and effect is irrelevant, or relevant only insofar as it sheds light on purpose; (2) effect alone is the test, and purpose is irrelevant; and (3) purpose or effect, either alone or in combination, is sufficient to show unconstitutionality.

may serve to distinguish it from the panoply of other constitutional rights protected by the Fourteenth Amendment.

We need not decide this question here, however, because even assuming, *arguendo*, that the Fifteenth Amendment reaches only purposeful discrimination, we find that Congress was within its broad enforcement power under section 2 thereof when it outlawed voting changes discriminatory in effect only. Chief Justice Warren emphasized the sweeping nature of this power in *South Carolina v. Katzenbach, supra*, 383 U.S. at 327, when he quoted with approval the following broad statement in *Ex Parte Virginia*, 100 U.S. 339, 345-46 (1879):

> Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

As the Chief Justice noted, this language echoes the classic formulation of congressional power under the Necessary and Proper Clause:

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819).

Under this standard, we have no doubt but that section 5's ban on "effect" discrimination is an appropriate means even if it is assumed that the desired end is solely the elimination of purposeful discrimination. For one thing, discriminatory effects raise a legitimate, and often com-

pelling, inference of purpose. The Court recognized this fact in *Washington, supra:*

> Necessarily, an invidious discriminatory purpose may often be inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another. It is not infrequently true that the discriminatory impact . . . may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds.

426 U.S. at 242. *Accord, Arlington Heights, supra*, 429 U.S. at 264-66.

While the inference of invidious purpose would be a legitimate one in any case, it is especially strong in the case of the Voting Rights Act. Congress, in its investigation preceding passage of the Act, found that pervasive purposeful voting discrimination existed in various parts of the country, particularly in the Southern states. The Act's coverage formula, *see* note 53 *supra*, was designed to identify those states or subjurisdictions that were most likely to have engaged in a pattern of invidious discrimination. *South Carolina v. Katzenbach, supra*, 383 U.S. at 329-30. Thus, congressional fact finding, to which we are inclined to pay great deference, *Katzenbach v. Morgan*, 384 U.S. 641, 656 (1966), strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose also.

The means of banning "effect" discrimination is well adapted to the end of eliminating purposeful discrimination in another sense also. Congress found as a fact that many of the jurisdictions subject to the Act had taken various actions designed to nullify the effect of adverse

federal court decrees. As explained in *South Carolina v. Katzenbach, supra:*

> Even when favorable decisions have finally been obtained, some of the states affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls.

383 U.S. at 314 (footnotes omitted).

As jurisdictions became increasingly sophisticated at evading the strictures of federal decrees, they frequently adopted tactics characterized by superficial racial neutrality. *See* S.Rep. *supra,* at 5, H.R.Rep., *supra,* at 8. Given the frequent lack of state legislative histories and the unreliability of other means of ascertaining legislative intent, Congress could well have concluded that wholesale evasion of the Act was likely unless discriminatory effects could be taken as conclusive evidence of purpose. Such a conclusion would comport with Congress's broad tactic, in the Voting Rights Act, of "shift[ing] the advantage of time and inertia from the perpetrators of the evil to its victims." *South Carolina v. Katzenbach, supra,* 383 U.S. at 328.

Viewed most narrowly, then, section 5 of the Act simply represents an exercise by Congress, based on facts found during an exhaustive investigation, of its power to establish standards of proof for facts which are admittedly Fifteenth Amendment violations. In effect, Congress can be said to have instructed the courts that the existence of racially disproportionate impact raises an irrebuttable presumption of invidious purpose. We can see no constitutional

impediment to Congress' taking such an approach. *See South Carolina v. Katzenbach, supra,* 383 U.S. at 330.

This conclusion finds support in the Court's treatment of the Voting Rights Act's ban on literacy tests and other voter qualifications. In *Lassiter v. Northhampton County Board of Elections,* 360 U.S. 45 (1959), a case decided prior to enactment of the Voting Rights Act, the Court held that literacy tests and related devices were not *per se* violative of the Fifteenth Amendment, although "[o]f course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." *Id.* at 53. Without disavowing *Lassiter,* the Court in *South Carolina v. Katzenbach, supra,* held that Congress had power to suspend the operation of such tests within jurisdictions subject to the Act. And in *Oregon v. Mitchell,* 400 U.S. 112 (1970), the Court unanimously upheld Congress' subsequent suspension of literacy tests on a nationwide basis. These cases, we think, present a substantial analogy to the present challenge. In *Lassiter,* the Court in effect held that although use of a literacy test does not *per se* contravene the Fifteenth Amendment, it at least raises a legitimate inference of such a violation. In the Voting Rights Act, Congress could be said to have created an irrebuttable presumption, based on extensive legislative fact finding, that use of a literacy test established the existence of a constitutional violation. The Court's upholding of this presumption in *South Carolina v. Katzenbach* and *Oregon v. Mitchell* is strong evidence that the presumption established by section 5 of the Act—that invidious purpose is to be presumed given the existence of disproportionate impact—would also be upheld.[74]

---

[74] In light of this disposition, we need not inquire whether, still assuming that the Fifteenth Amendment of its own force reaches purpose only, Congress has the power under Katzenbach v. Morgan, 384 U.S. 641 (1966), to extend the substantive content of

B.

Plaintiffs' second constitutional argument is that, even if Congress otherwise had the power to enact section 5, we must nevertheless strike that provision down, under the rule of the *National League of Cities* opinion, as invading the protected sphere of traditional state autonomy. Plaintiffs' argument, in our view, reads far too much into *National League of Cities*. The Court in that case held that Congress could not, consistently with principles of federalism embodied in the Tenth Amendment, exercise its power under the Commerce Clause to extend minimum wage and maximum hour regulations to employees of state and local governments. Despite the seeming breadth of the federalism principle articulated, the Court was at pains to limit its holding to Commerce Clause regulations and, significantly, expressed no view as to "whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as . . . § 5 of the Fourteenth Amendment." 426 U.S. at 852 n.17. In reserving this question, the Court also implicitly left undecided the issue in the present case of whether, or to what extent, the *National League of Cities* principle places limits on congressional action pursuant to the enforcement power in section 2 of the Fifteenth Amendment.

Fifteenth Amendment protections so as to proscribe voting discrimination in effect as well as in purpose.

A similar issue arises in the context of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, which forbids "effect" discrimination in employment matters, Griggs v. Duke Power Co., 401 U.S. 424 (1971), although the Fourteenth Amendment, which together with the Commerce Clause was the basis for congressional power to enact Title VII, reaches of its own force only purposeful discrimination. *See* Note, ***Title VII and Public Employers: Did Congress Exceed its Powers?*** 78 COLUM. L. REV. 372 (1978).

The Court gave very strong indications of how it would resolve the latter question in *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976), a case decided just four days after *National League of Cities* and also written by Justice Rehnquist. The question in *Fitzpatrick* was whether, against the shield of the Eleventh Amendment, Congress had power to authorize an award of retroactive monetary relief against the states as a means of enforcing the Fourteenth Amendment. The Court's answer was unequivocal:

> [W]e think that the Eleventh Amendment, and the principle of state sovereignty which it embodies, . . . are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment. In that section Congress is expressly granted authority to enforce "by appropriate legislation" the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority. When Congress acts pursuant to § 5, not only is it exercising legislative authority that is plenary within the terms of the constitutional grant, it is exercising that authority under one section of a constitutional Amendment whose other sections by their own terms embody limitations on state authority. We think that Congress may, in determining what is "appropriate legislation" for the purpose of enforcing the provisions of the Fourteenth Amendment, provide for private suits against States or state officials which are constitutionally impermissible in other contexts.

Id. at 456.[75]

Although *Fitzpatrick* did not directly address the question presented here, we find that analytically it compels

---

[75] This analysis was followed in Hutto v. Finney, 437 U.S. 678 (1978), upholding the Civil Rights Attorney's Fees Awards Act of 1976 against the claim that it infringed the states' Eleventh Amendment immunity.

a like result. To be sure, the case arose under the Fourteenth Amendment rather than the Fifteenth; but these Amendments share a common history and both have explicit enforcement provisions. The Court in *Fitzpatrick* strongly hinted that the analysis would be the same in both cases. Citing *Katzenbach*,[16] the Court observed that it has

> sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States. The legislation considered in each case was grounded on the expansion of Congress' powers—with the corresponding diminution of state sovereignty—found to be intended by the Framers and made part of the Constitution upon the States' ratification of those Amendments, a phenomenon aptly described as a "carving out". . . .

Id. at 455-56, *quoting Ex Parte Virginia*, 100 U.S. 339, 346 (1880). We are also aware that *Fitzpatrick* involved the Eleventh rather than the Tenth Amendment. Again, however, these amendments share a common grounding in "*principle*[*s*] *of state sovereignty*," 427 U.S. at 456 (emphasis supplied), and we see no reason to suppose that in this context the states' Tenth Amendment immunities should be significantly broader than those under the Eleventh Amendment. The short of it is, as the Court stated in *Katzenbach*,

> As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in

[16] This citation is of particular relevance because the primary constitutional challenge to the Voting Rights Act provisions in *Katzenbach* was based on the Tenth Amendment, *i.e.*, "that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution." 383 U.S. at 323.

> voting. . . . *The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power.*

383 U.S. at 324, 325 (emphasis supplied).

The only remaining question, then, is whether section 5 of the Act is an "appropriate" means of enforcing the Fifteenth Amendment. As the Court has frequently noted, the section 5 requirement that state and local governments submit changes in their laws affecting voting to the Attorney General is an "unusual, . . . in some aspects a severe, procedure," *Allen, supra*, 393 U.S. at 556, and a "stern and powerful remedy," *Briscoe v. Bell, supra*, 432 U.S. at 410. The function of section 5 is in effect to freeze the electoral processes of a covered jurisdiction until the necessary preclearance is obtained. In so providing, "Congress was well aware of the extraordinary effect the Act might have on federal-state relationships and the orderly operation of state government." *Allen, supra*, 393 U.S. at 563. Nevertheless, Congress made a considered judgment that this extraordinary procedure was necessary to remedy the systematic evasion of the Fifteenth Amendment that had hitherto been occurring. The Court upheld the appropriateness of this congressional judgment in *Katzenbach*, and has never since questioned or otherwise undermined this holding.[17] We conclude, therefore, that section 5 of the

[17] Plaintiffs claim that, as a result of the operation of § 5, no elections have taken place in Rome since 1974. We have some doubt as to whether the sole responsibility for the freezing of elections in Rome rests with the operation of § 5, or whether, on the contrary, the present City officials do not bear a share of the blame. *See* text accompanying note 79 *infra*. In any event, a 5-year suspension of elections during § 5 litigation is by no means unusual. When the Supreme Court decided Beer v. United States, *supra*, elections had been frozen for six years, while in City of Richmond v. United States, *supra*, the Court remanded to the District Court for further factfinding a case in which elections had already been frozen for 5 years.

Act is entirely consistent with the principles of federalism as embodied in the Tenth Amendment and articulated in *National League of Cities.*

C.

We need not reach the merits of plaintiffs' contention that section 5 constitutes a violation of the Guarantee Clause,[78] since it has long been settled that such issues are generally not justiciable in federal court. *Baker v. Carr,* 369 U.S. 186 (1962); *Luther v. Borden,* 48 U.S. (7 How.) 1 (1849). We are bound to note, moreover, that section 5 would appear to be, if anything, an affirmative exercise of Congress' power under that provision rather than an abrogation of its duty. The purpose of section 5, simply speaking, is to guarantee to the covered jurisdiction one essential feature of a truly republican form of government—*i.e.,* the equal right of any citizen, irrespective of race or color, to exercise the franchise. *See* S. REP., *supra,* at 34.

D.

The private plaintiffs claim that, allegedly as a result of the operation of section 5, regularly scheduled elections have not been held in Rome since 1974 and cannot be held at least until the completion of this litigation. The private plaintiffs assert that as a result of their inability to vote in municipal elections, they have been deprived of certain rights guaranteed under various provisions of the Constitution.

We note, at the outset, that the damage complained of by the private plaintiffs is at least as much the result of the actions of Rome's elected officials as of the Voting Rights Act. It would appear that, because the Attorney General has precleared the reduction in wards from 9 to

[78] U.S. Const., Art. IV, § 4.

3 but has not precleared certain other voting changes, the City Charter as presently effective contains inconsistencies that would make an election technically infeasible. The Attorney General, however, has made known his willingness to permit elections on the pre-existing at-large and plurality-win system.[79] Doubtless, the Attorney General would readily preclear any technical amendments to the City Charter necessary to permit the holding of elections and effective operation of the City government. It would not appear that the City has even discussed this possibility with the Attorney General.

Even if we agreed that the injuries complained of result from operation of the Voting Rights Act, we would find little merit to the plaintiffs' arguments. We need not decide whether the right to vote in a municipal election when that election is regularly scheduled can ever be deemed a fundamental right protected by the Constitution. For even if fundamental interests were at stake, we believe section 5 of the Act is justifiable as advancing the compelling national interest of enforcing the Fifteenth Amendment by "eras[ing] the blight of racial discrimination in voting." *Sheffield, supra,* 435 U.S. at 118, *quoting South Carolina v. Katzenbach, supra,* 383 U.S. at 308. Moreover, the means chosen in section 5 were narrowly tailored to advancing this interest. To be sure, the preclearance procedure, as Congress recognized, is a stringent and even drastic measure. But Congress chose to adopt this procedure because in its considered judgment nothing less would effectively combat the pervasive evil of discrimination in voting. In the words of Chief Justice Warren:

> Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil

[79] Defendants' Response to Plaintiffs' Motion for Interim Relief, at 5.

> which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment.

South Carolina v. Katzenbach, supra, 383 U.S. at 309.

We note, too, that Congress adopted a number of measures designed to mitigate what it recognized to be the potentially harsh operation of section 5. Thus, states or separately covered political subdivisions are permitted to bail-out from section 5's coverage under section 4(a) of the Act. *See* Part II *supra.* Moreover, Congress provided jurisdictions the alternative of submitting their voting changes for approval to the Attorney General rather than to this Court. The administrative preclearance mechanism was intended to be, and has in fact operated as, a non-burdensome procedure by which the vast proportion of voting changes are approved within a brief period. Further, Congress provided that, should litigation occur, it was to take place before a 3-judge District Court with direct appeal to the Supreme Court, thus giving the plaintiff jurisdiction the advantages of plenary consideration at the trial level together with quick access as of right to the Supreme Court without the burden of passing through an intermediate appellate stage.

In light of the foregoing considerations, we find that none of plaintiffs' constitutional challenges to section 5 of the Act has merit. We therefore decline the suggestion to depart from the Supreme Court's explicit statement that section 5 is constitutional "under all . . . provisions of the Constitution." *South Carolina v. Katzenbach, supra,* 383 U.S. at 308.

V.

Finally, we come to the basic issue for decision in any section 5 case, *i.e.*, whether the plaintiff jurisdiction has carried its burden of showing that the voting changes at issue had neither the purpose nor the effect of denying or abridging the right to vote on account of race or color.[80] This determination requires us to make findings, as requested by the parties, of disputed issues of material fact. Thus, our decision as to this question is more properly styled a final judgment on the basis of the stipulated record rather than a summary judgment.

A.

Although the issue is a close one, we conclude that the City has carried its burden of showing that its non-annexation voting changes were not enacted with a discriminatory purpose. It is, of course, grounds for suspicion that these provisions were adopted so soon after passage of the Voting Rights Act. The "specific sequence of events leading up to the challenged decision," *Arlington Heights, supra,* 429 U.S. at 267, is obviously important evidence from which an invidious purpose can be inferred. Moreover, as we discuss below, the provisions adopted are typical of those generally thought to be aimed at preventing the black community's maximizing its voting strength through "single-shot" voting. *See* note 95 and accompanying text *infra.* Finally, although the then-City Attorney, Mr. Clary, testified that he recommended the switch to

---

[80] It is well established that the § 5 plaintiff has the burden of demonstrating both lack of invidious purpose *and* absence of discriminatory effect. Beer v. United States, 425 U.S. 130, 140-41 1976); Georgia v. United States, 411 U.S. 526, 538 (1973); South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966); Wilkes County v. United States, 450 F. Supp. 1168, 1177-78 (D.D.C.), *aff'd,* 99 S. Ct. 606 (1978); City of Petersburg v. United States, 354 F. Supp. 1021, 1027-28 (D.D.C. 1972), *aff'd,* 410 U.S. 962 (1973).

majority voting in order to comply with the Georgia Election Code of 1964,[81] the record demonstrates that the 1964 law did not in fact apply to municipal elections.[82]

The City, however, has adequately rebutted these inferences through the testimony and affidavits of many of those who played a part in the adoption of the 1966 City Charter amendments. These amendments were recommended to the Commission by Mr. Clary. The Commission, presumably after consultation with the City Manager, requested the local representatives to the State legislature to introduce the proposed amendments as local legislation. The representatives complied with the request, and the Georgia General Assembly proceeded to enact the Charter amendments as introduced. The City has obtained the sworn statements of participants at every stage in this process—the City Attorney,[83] five Commissioners,[84] the City Manager,[85] and the local representatives to the State legislature [86]—to the effect that their actions were not motivated by any consideration of race or color. Although these officials may be "interested witnesses," *City of Richmond v. United States*, 422 U.S. 358, 377 (1975), the unanimity of their sworn statements cannot be discounted. We are unwilling, particularly on the basis of a stipulated record, to question their credibility in this regard.

---

[81] Clary Deposition 54-55 & Ex. 1.

[82] *See* Second Supplement to Parties' Stipulation of Facts, Ex. 44 ¶ IV at 2.

[83] Clary Deposition 56.

[84] Affidavits in Support of Plaintiffs' Motion for Summary Judgment of Grover C. Byars, S. L. Hancock, Lucian Oldham, R. L. Starnes and John E. Yarmough.

[85] Hamler Deposition 28, 116.

[86] Affidavits in Support of Plaintiffs' Motion for Summary Judgment of J. Rattle Hall and Terry J. Minge.

Thus, on the present record we accept the argument that the majority vote and associated runoff election and numbered posts [87] provisions were enacted primarily because of the City Attorney's mistaken belief that such a system was required under state law. Staggered terms were most likely adopted because City officials felt they would contribute to continuity in the City Government.[88] And the Board of Education residency requirement, we find, was enacted to ensure responsiveness by Board members to the particular concerns of their wards.[89]

We reach a different result, however, on the question of whether the City has met its burden of showing the absence of discriminatory *effects* from its non-annexation voting changes. With respect to the majority vote and runoff election provisions, the discriminatory effect is clear beyond peradventure. Under the plurality-win system, a black candidate in Rome would stand a good chance of election if the white citizens split their votes among numerous candidates and the black voters engaged in "single-shot" voting, *i.e.*, voted only for the candidate or candidates of their choice.[90] Under the majority vote/runoff

---

[87] The City Attorney testified that numbered posts were needed to facilitate the division of the Commission into committees. Clary Deposition 51-53. This objective could easily have been accomplished without numbered posts, however. A more likely explanation is that numbered posts were intended to make majority voting possible by conveniently dividing Commission and Board of Education elections into separate races.

[88] Clary Deposition 45-47; Hunter Deposition 11-13; Harvey Deposition 11-12.

[89] See Clary Deposition 27-30, 36-39; Hamler Deposition 22-24; Harvey Deposition 10-11.

[90] The United States Commission on Civil Rights has described single-shot voting as follows:

> Consider . . . the town of 600 whites and 400 blacks with an at-large election to choose four council members. Each voter is able to cast four votes. Suppose there are eight white candi-

election scheme, however, the black candidate, even if he gained a plurality of votes in the general election, would still have to face the runner-up white candidates in a head-to-head runoff election in which, given bloc voting by race [91] and a white majority,[92] the black candidate would be at a severe disadvantage. Rev. Hill's Board of Education campaign exemplifies the dilutive effect on black voting strength of these rules: he would have been elected under the pre-1966 plurality-win system, but was defeated by the white candidate in the runoff election under the majority vote regime.[93]

The effects of the numbered posts, staggered terms, and Board of Education residency provisions are somewhat less clear. The Government has argued, in conclusory terms, that these rules have a discriminatory impact on black voting strength because such provisions "promote head-to-head contests between white and black condidates and deprive the black community of the opportunity to elect a candidate of their choice through single-shot voting." [94]

---

dates, with the votes of the whites split among them approximately equally, and one black candidate, with all the blacks voting for him and no one else. The result is that each white candidate receives about 300 votes and the black candidate receives 400 votes. The black has probably won a seat. This technique is called single-shot voting. Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.

U.S. Comm'n on Civil Rights, The Voting Rights Act: Ten Years After 206-07 (1975).

[91] *See* text accompanying notes 37-42 *supra*.

[92] *See* text accompanying note 1 *supra*.

[93] *See* text accompanying note 41 *supra*.

[94] Defendants' Proposed Findings of Fact and Conclusions of Law §§ 29, 30.

Although the Government's conclusions are not inherently unreasonable and, at least with respect to single-shot voting, are supported by expert authority,[95] we could have benefitted from citation of supporting studies from the statistical or political sciences. Nevertheless, the City has shown us nothing at all that might refute the Government's argument. In this situation we are bound to find that it has failed to satisfy its burden of demonstrating that numbered posts, staggered terms and the residency provision do not have the effect of discriminating on the basis of race or color.

B.

The defendants concede that the thirteen contested annexations were not effected out of discriminatory purpose.[96] The only question, therefore, is whether the annexa-

---

[95] In the words of the U.S. Commission on Civil Rights,

> There are a number of voting rules which have the effect of frustrating single-shot voting . . . . [I]nstead of having one race for four positions, there could be four races, each for only one position. Thus for post no. 1 there might be one black candidate and one white, with the white winning. The situation would be the same for each post, or seat—a black candidate would always face a white in a head-to-head contest and would not be able to win. There would be no opportunity for single-shot voting. A black still might win if there were more than one white candidate for a post, but this possibility would be eliminated if there were also a majority requirement.
>
> [Second,] each council member might be required to live in a separate district but with voting still at large. This—just like numbered posts—separates one contest into a number of individual contests.
>
> [Third,] the terms of council members might be staggered. If each member has a 4-year term and one member is elected each year, then the opportunity for single-shot voting will never arise.

U.S. Comm'n on Civil Rights, *supra* note 90, at 207-08.

[96] Defendant's Proposed Findings of Fact and Conclusions of Law ¶ 19.

tions had a discriminatory effect within the meaning of section 5.

Although annexations have long been held subject to the Voting Rights Act, *Perkins v. Matthews,* 400 U.S. 379 (1971), they do present unusual considerations and require special judicial treatment. The problem, broadly stated, is that virtually any annexation will change the racial balance in the jurisdiction and thereby, in a sense, dilute the voting power of a particular racial group. Application of a mechanistic test for voting dilution would require this Court to deny preclearance to practically all annexations, even those accomplished for compelling and non-discriminatory reasons of municipal finance, orderly growth, or provision of services. Such a result, as we recognized in *City of Petersburg v. United States,* 354 F.Supp. 1021, 1030 (D.D.C. 1972), *aff'd,* 410 U.S. 962 (1973), could not be consonant with the intent of Congress when it enacted the Voting Rights Act. To the contrary, it is probable that Congress would have condoned even annexations that dramatically altered racial balance so long as those annexations were not discriminatory in purpose and did not have the effect of perpetuating or reinforcing discriminatory effects stemming from the operation of other discriminatory voting rules.

The solution adopted in *City of Petersburg,* and subsequently endorsed by the Supreme Court, was to treat the voting practices under review in annexation cases as being, not the geographic extension of boundary lines, but rather the expansion of the particular voting system existing in the community at the time of the annexation.[97] It is not sufficient, under this doctrine, that an annexation significantly reduces the proportion of voters of a particular

[97] "The Court concludes then, that this annexation, insofar as it is a mere boundary change and not an expansion of an at-large system, is not the kind of discriminatory change which Congress sought to prevent. . . ." 354 F.Supp. at 1031.

race; it is necessary also that the minority race must be denied the opportunity to obtain "representation reasonably equivalent to [its] political strength in the enlarged community." *United Jewish Organizations v. Carey,* 430 U.S. 144, 160 (1977), *quoting City of Richmond, supra,* 422 U.S. at 370-71; *accord, City of Petersburg, supra,* 354 F. Supp. at 1030.

Additionally, this Court in *City of Petersburg* fashioned a remedial device, also subsequently endorsed by the Supreme Court, *City of Richmond, supra,* 422 U.S. at 369-370, designed to ensure that annexations in violation of the above standard could nevertheless be accomplished as simply and rapidly as possible upon elimination of the offending features of a city's voting rules.[98] Although the Court denied preclearance to the contested annexation, it retained jurisdiction over the case and directed the plaintiff to "prepare a plan for conducting its city council elections in accordance with the requirements of the Voting Rights Act as interpreted by this Court. . . . Judgment in *City of Petersburg, supra, quoted in City of Richmond, supra,* 422 U.S. at 370. In effect, the Court conditioned approval of the annexation upon the City's amending its voting rules to comport with the legal standard articulated in that case.

Application of *City of Petersburg* and later cases requires us to determine (1) whether the annexations significantly altered the racial balance in Rome; and (2) if so, whether the post-annexation political system ensures the black community representation reasonably commensurate with its voting strength in the expanded City.

In addressing the first question, we will look at the annexations as of the date of the most recent information—

[98] The Court in *City of Petersburg* had no power to mandate reform in the rules themselves, apart from the annexations, because these rules had not been changed. *Cf.* Beer v. United States, 425 U.S. 130 (1976).

information which reflects an effect on black voting strength considerably more pronounced than was the case when the annexations were initially implemented.[99] This approach comports with the terms of section 5, *quoted* in note 43 *supra*, which requires, in the future tense, that the plaintiff jurisdiction demonstrate that its voting changes "*will not*" have a discriminatory effect; it comports also with the fact that cities frequently annex relatively unpopulated areas for purposes of future growth and development. Prior judicial opinions further teach that a court in Voting Rights Act cases should respond to the

[99] The following table indicates the racial composition, in the annexed areas, of the gross, voting age, and registered voter populations:

	Population by Race				Voting Age Population				No. Registered Voters			
	At Annexation		February 1978		At Annexation		February 1978		At Annexation		February 1978	
Annexed Area	White	Black	White	Black	White	Black	White	Black	White	Black	White	Black
Saddle Mountain	0	0	78	0	0	0	141	0	0	0	134	0
Holmes Acres (E. 11th Ext.)	144	0	263	0	95	0	174	0	31	0	98	0
Lyons Drive West Rome	78	3	315	28	51	1	208	16	8	0	35	6
Georgian—Old Salem Apts.	0	0	295	6	0	0	195	3	0	0	42	1
Battey Hospital	35	0	32	0	21	0	21	0	8	0	11	0
Maplewood Square	0	0	84	0	0	0	55	0	0	0	42	0
Garden Lakes Rollingwood	0	0	172	0	0	0	114	0	0	0	38	0
Berkshire Estates	0	0	112	0	0	0	74	0	0	0	61	0
W.A. DuPre—Rockmart Rd.	0	0	321	8	0	0	222	2	0	0	49	1
Westminster Apts. Harry Butler	0	0	220	10	0	0	138	3	0	0	49	1
Castle Cove Subdivision	0	0	95	0	0	0	63	0	0	0	14	0
Saddle Mt., Sec. 4 Bill DuPre	0	0	84	0	0	0	55	0	0	0	47	0
Old Airport Community	781	0	511	0	515	0	337	0	241	0	203	0
TOTALS	1,038	3	2,582	52	682	1	1,797	24	288	0	823	9

realities of a situation as they exist at the time of decision.[100]

Additionally, we will not treat these thirteen annexations as separate voting changes, in which case we would be compelled to sustain many of them as having *de minimis* effect only.[101] Instead, we view them as a single and unified whole. The reality is that these annexations, although effected separately, have an indivisible cumulative impact on black voting strength in Rome. We are also concerned lest the Act be frustrated through piecemeal changes which are insignificant when taken separately but of considerable moment when added together. Finally, viewing these annexations from the present perspective and as a unit is eminently fair in light of the fact that the reason for the delay and for our consideration of the annexations as a group was Rome's initial failure to comply with the Act by submitting them when they occurred.

Viewed in this manner, we find that the annexations in question significantly alter the racial balance in Rome. To be sure, the effect here is not as compelling as in *City of Petersburg* or *City of Richmond*, cases in which the annexations resulted in a shift from a black majority population to a white majority. But the effect in the present case is significant nonetheless. As of February, 1978, the annexed areas contained 2,582 whites, 823 of whom were registered to vote, and 52 blacks, only 9 of them registered. By comparison, in 1975 the registered voters in the City

[100] *See City of Richmond, supra*, 422 U.S. at 373-375 (even if annexations were originally undertaken with an impermissible purpose, they can be sustained under § 5 if at the time of decision there are sound non-discriminatory grounds to support them); Perkins v. Matthews, *supra*, 400 U.S. at 394-95 (even though voting change was officially made prior to effective date of the Act, change had to be submitted for preclearance because not implemented in fact until after effective date).

[101] *See* note 99 *supra*.

as a whole totalled 10,982 whites and 2,026 blacks.[102] Thus, it is fair to infer that presently close to 10% of the white voters, and virtually none of the black voters, reside in the annexed areas.

Because we find the impact on black voting strength to be significant, we must inquire further whether the black community after the annexations, has a fair opportunity to obtain representation reasonably commensurate with its post-annexation numerical strength. Our answer would be clear if it were based on Rome's political system as presently instituted. In light of our findings as to the effect of the Charter amendments also at issue in this case, we have no doubt that a significant increase in the proportion of white voters perpetuates and reinforces the discriminatory effect of these voting rules. However, because of our findings and conclusions in this regard, Rome's legally effective electoral system operates under pre-1966 rules, *i.e.*, with plurality voting and without numbered posts, staggered terms, runoff elections or the Board of Education residency requirement. Whether the annexations have a discriminatory effect when viewed against this context is a far more difficult question.

Even under the pre-1966 rules, Rome's elections would be conducted at-large and, we presume, would be characterized by a high degree of racial bloc voting. These two factors were also present in *City of Petersburg, supra,* in which the Court found the annexation to have discriminatory effect and conditioned approval thereof on the city's abandonment of at-large voting in favor of elections by ward. If *City of Petersburg* is controlling here, we would have to deny preclearance of these annexations and condition our approval upon Rome's adoption of some acceptable plan for elections by single-member districts.

[102] Parties' First Stipulation of Facts ¶3.

There are, however, substantial factual differences between the cases. Most significantly, perhaps, elections in Petersburg were by majority vote whereas those under Rome's pre-1966 rules are by plurality vote—the latter rule, as we have noted, *see* notes 90-93 and accompanying text *supra,* being much more conducive to the election of a black candidate. Further, the facts recited by the Court in *City of Petersburg* reveal a far greater degree of racial polarization than is present in Rome's relatively benign racial atmosphere. And while Rome's elected officials have been quite responsive to the interests of the black community, the City Council of Petersburg was generally unresponsive to black needs.

The evidence in the present case tends to show that blacks will have a fair opportunity to obtain representation reasonably commensurate with their post-annexation voting strength. Rev. Hill, as we have noted, would have been elected to the 6-member Board of Education under a plurality system; and there is no reason why a similarly strong black candidate could not garner sufficient votes to win 1 of the 9 City Commission seats. A number of black witnesses stated that a black could win under a plurality system;[103] and only one black witness testified that single-member districts were necessary if blacks were to elect the candidate of their choice.[104] Moreover, adequacy of representation is not measured solely by the black community's ability to elect its first-choice candidate. Because blacks often hold the balance of power in Rome elections, they are situated to exert considerable influence over many elected officials, not simply those representing an exclusively black constituency. On the other hand, while single-member districts might guarantee the election of one representative of the black community, such a scheme could ironically diminish the overall effectiveness of representa-

[103] Joe Wright Deposition 14; Charmichael Deposition 15.

[104] Moreland Deposition 45.

tion by eliminating the inducement for white officials to respond sympathetically to black needs.

There are other disadvantages to judically enforcing a switch to single-member districts that make us loath to do so absent a somewhat more compelling showing that existing voting rules and practices would operate discriminatorily. For one thing, as the Court noted in *City of Petersburg,* single-member districts can sometimes result in the hegemony of special interests over the needs of the whole community:

> We recognize that the election from single-member districts of a number of governmental representatives to a body composed of several members, rather than being elected at-large from the governmental unit, has the effect of making the representatives from the single districts more responsive to the special interests and characteristics of the individual district. Conversely, the election of all such representatives from the governmental unit at-large (as from an entire city) generally causes the representatives to be more responsive to, and characteristic of, the interests of the entire city. Representatives from single districts generally are more responsive to the special interests of their districts, and at-large representatives generally serve the entire community more effectively.

354 F.Supp. at 1027. We are also concerned at the intrusiveness of a federal court requiring the City, on pain of being frozen into outmoded boundaries, to abandon the at-large rule, which has been the fundamental premise of Rome's electoral system since 1918. Particularly because this Court has no authority, under section 5, to affect the at-large rule directly, *Beer v. United States,* 425 U.S. 130 (1976), our conditioning approval of the annexations upon adoption of single-member districts might be viewed as inappropriate.

These various considerations are reinforced by the position taken by the Department of Justice on this issue. Although the Attorney General has suggested that single-member districts would be an appropriate means of minimizing the impact of the annexations, he has nowhere stated that this is the only acceptable approach. To the contrary, during the administrative proceedings, the Justice Department indicated that it was willing to reconsider its objection to the annexation if the City agreed to revert to a simple plurality-win system. Indeed, the Attorney General *withdrew* his objection to the annexations insofar as they affected Board of Education elections because these elections reverted automatically to an acceptable plurality-win system when he interposed objections to the Board of Education's staggered term, majority voting, runoff election and residency provisions. The Attorney General did not withdraw his objection with respect to City Commission elections only because the residency requirement for these elections had been adopted prior to the date of the Act and therefore remained in effect. The implication was that the Attorney General would be willing to grant full preclearance to the annexations if the residency requirement were eliminated.[105]

---

[105] The Justice Department's letter, in pertinent part, read as follows:

> With respect to the objection to the 13 annexations, we are mindful of the suggestion in my October 20, 1975, letter that the Attorney General would reconsider his determination should the city, *inter alia,* undertake again to elect its councilmen and Board of Education members by a simple plurality-win system which does not incorporate the limiting features objected to therein. Since the continued objection to those features renders the majority vote requirement, numbered posts and residency requirement for Board of Education elections legally unenforceable the necessary effect of that objection is a reversion to the previously existing simple plurality-win system. In view of that circumstance, therefore, the Attor-

While we in no way sit in judgment on the merits of the Attorney General's determinations made during administrative preclearance proceedings, *Morris v. Gresette,* 432 U.S. 491 (1977); *Briscoe v. Bell,* 432 U.S. 404 (1977), we do find this letter to be strong evidence of what the Attorney General would be willing to accept in the present proceeding. Further, because the residency requirement is a relatively minor and peripheral aspect of Rome's voting procedures, we do not perceive particular dangers of intrusiveness inherent in our conditioning approval of the annexations on its abandonment. We will therefore deny the City's motion as regards the annexations. However, this denial is without prejudice to renewal by the City, if it wishes to obtain preclearance, upon the undertaking of suitable action consistent with the views expressed herein.

VI.

For the reasons expressed in the preceding discussion, we grant the City's unopposed request for summary judgment on the transfer of voter registration duties to Floyd County. We deny the plaintiffs' motion for summary judgment, and grant that of the defendants, on Counts I, II, III and IV of plaintiffs' amended complaint. Count V,

---

ney General withdraws his objection to the 13 annexations insofar as Board of Education elections are concerned.

We cannot, however, reach a similar conclusion relative to City Commission elections. The pre-existing residency requirement for commission elections (which the Attorney General's objection does not reach because it did not constitute a change) prevents that electoral system from being a simple plurality-win system. Consequently, in view of the limiting residency feature in the context of at-large voting and indications that racial bloc voting exists, the Attorney General is unable to withdraw his objection to the 13 annexations insofar as City Commission elections are concerned.

Second Supplement to Parties' Stipulation of Facts, Ex. 45.

as we have noted, has previously been disposed of.[108] Treating the papers as motions for final judgment on the basis of the stipulated record with respect to Count VI, we grant the defendants' motion and deny that of the plaintiffs. However, this decision is without prejudice to renewal regarding that portion of the decision which concerns the effect of the annexations.

/s/ CARL MCGOWAN
Circuit Judge

/s/ CHARLES R. RICHEY
District Judge

I concur in the result

/s/ OLIVER GASCH
District Judge

---

[108] *See* note 49 *supra.*

APPENDIX C

Title 42 United States Code

§ 1973b. Suspension of the use of tests or devices in determining eligibility to vote—Action by state or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court

(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia is an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the seventeen years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section. *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of seventeen years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this subchapter, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of such tests or devices have

occurred anywhere in the territory of such plaintiff. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the ten years preceding the filing of the action for the purpose of with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section: *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of ten years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this paragraph, determining that denials or abridgments of the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section through the use of tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the seventeen years preceding the filing of an action under the first sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the ten years preceding the filing of an action under the second sentence of this subsection for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section, he shall consent to the entry of such judgment.

Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register

(b) The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director

of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

Definition of test or device

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully com-

pleted an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures

(f)(1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.

(2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.

(3) In addition to the meaning given the term under subsection (c) of this section, the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or

voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.

(4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: *Provided,* That where the language of the applicable minority group is oral or unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

§ 1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court, appeal to Supreme Court

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in

section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State of subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment

entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

As amended Pub.L. 94-73, Title II, §§ 204, 206, Title IV, § 405, Aug. 6, 1975, 89 Stat. 402. 404.

APPENDIX D

Elections, Municipal

34A-102. Application of Code.—This Code shall apply to any general or special election in every municipal corporation of this State to fill any municipal office, and to any general or special municipal primary, if any, to nominate candidates for any such office, to any election to submit a question to the people, and to any other municipal election or primary for any other purpose whatsoever. Except as specifically provided in this Code, its provision shall take precedence over municipal charter provisions which are in conflict herewith.

(Acts 1968, pp. 885, 887.)

34A-902. Candidate required to designate specific office sought in certain cases.—In the case of a candidate seeking one of two or more public offices each having the same title and to be filled at the same election by the vote of the same electors, charter or ordinance provisions now in effect or hereinafter enacted shall govern whether such candidate shall designate the specific office he is seeking. If required to designate the specific office, the candidate shall name his incumbent or give other appropriate designation. Such designation shall be entered on the ballot and ballot labels in such manner that in the ensuing primary or election such candidate shall only oppose the other candidate or candidates, if any, designating the same specific office.

(Acts 1968, pp. 885, 913.)

34A-1407 Municipal charter to govern vote required for nomination; runoff primary or election

(a) If the muncipal charter or ordinance, as now existing or as amended subsequent to the effective date of this subsection, provides that a candidate may be nominated or

elected by a plurality of the votes cast to fill such nomination or public office, such provision shall prevail. Otherwise, no candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office.

(b) In instances where no candidate receives a majority of the votes cast and the municipal charter or ordinance does not provide for nomination or election by a plurality vote, a runoff primary or election shall be held, between the two candidates receiving the highest number of votes. Such runoff shall be held not earlier than the fourteenth day and not later than the twenty-first day after the day of holding the first primary or election on a date specified by ordinance or resolution, unless such runoff date is postponed by court order. Only the electors entitled to vote in the first primary or election shall be entitled to vote in any runoff primary or election resulting therefrom; provided, however, that no elector shall vote in a runoff primary in violation of section 34A-518. The candidate receiving a majority of the votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. The runoff primary or election shall be a continuation of the first primary or election and only those votes cast for the two candidates receiving the highest number of votes in the first primary or election shall be counted. No write-in votes may be cast in a primary, runoff primary, or runoff election. If the candidate receiving the highest number of votes withdraws, the remaining candidates receiving the two highest number of votes shall be the candidates in the runoff. If the candidate receiving the second highest number of votes withdraws, no runoff shall be held and the candidate receiving the highest number of votes shall be nominated or elected as the case may be. If any candidate elegible to be in a runoff dies, or one of the two candidates originally receiving the highest number of votes is found to be ineligible, the remaining candi-

dates receiving the two highest number of votes shall be the candidates in such runoff. The candidate receiving the highest number of the votes cast in such runoff primary or election to fill the nomination or public office he seeks shall be declared the winner. The name of a write-in candidate eligible for election in a runoff shall be printed on the runoff election ballot in the independent column.

(c) In all cities having a population in excess of 100,000, according to the latest United States Decennial Census, in order for a candidate to be nominated for public office in any primary or elected to public office in any election, he must receive a majority of the votes cast to fill such nomination or public office.

(Acts 1968, pp. 885, 977; 1970, pp. 341, 344; 1974, pp. 82, 94; 1978, pp. 1025, 1031, eff. March 14, 1978.)

APPENDIX E

Georgia Laws 1966 Session

CITY OF ROME—ELECTION OF COMMISSIONERS.

No. 125 (House Bill No. 547).

An Act to amend section 4 of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885) creating a new charter and municipal government for the City of Rome, by striking section 4 of said Act and substituting in lieu thereof a new section 4 (a) (b) (c) (d) and (e); to provide that each ward of the City of Rome shall consist of post no. 1, post no. 2, and post no. 3 for election purposes; that a candidate for election shall designate the ward and post number for which he is a candidate; to provide the term of office of said commissioners; to provide that commissioners shall be elected by a majority of the consolidated vote of the entire city; to provide for the term of office of the present city commissioners; to provide the method for filing vacancies on said city commission; and to repeal all conflicting laws; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same:

Section 1. That section 4 of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885) creating a new charter and municipal government for the City of Rome, be and the same is hereby repealed in its entirety by substituting in lieu thereof a new section 4 (a) (b) (c) (d) and (e), reading as follows:

"Section 4 (a). Be it enacted by the authority aforesaid, that an election shall be held in said city on the first Tuesday in December 1968, to elect said commissioners who shall hold office from January 1969 until the time as hereinafter

set forth and until their successors are duly and legally qualified.

(b). Be it further enacted by the authority aforesaid, that the elected candidate from post no. 1 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December 1968, to serve and hold office from the first Monday in January 1969 until the first Monday in January 1975. The elected candidate from post no. 2 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December 1965, to serve and hold office from the first Monday in January 1969 until the first Monday in January 1973. The elected candidate from post no. 3 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December 1968, to serve and hold office from the first Monday in January 1969 until the first Monday in January 1971.

(c). Be it further enacted by the authority aforesaid, that if a candidate for the Rome city commission does not receive a majority of all the consolidated votes of the entire city cast in said election for the post for which he qualified as a candidate, a run-off election shall be held between the two candidates receiving the largest and greatest number of votes within 15 days after the regular election.

(d). Be it further enacted by the authority aforesaid, that after the initial election on the first Tuesday in December 1968, at the termination of the then elected commissioners' terms, as hereinbefore set forth, the commissioners of the city shall be elected for terms of four (4) years thereafter, or until their successors are duly elected and qualified. Said subsequent elections are to be held on the first Tuesday in December of each year and said commissioners shall serve and hold office for a term of four (4) years from the first Monday in January of the year they assume office.

(e). Provided, however, notwithstanding any other provision of the charter of the City of Rome, and this amend-

ment to said charter, the present members of the city commission of the City of Rome, Georgia shall continue in office until the first Monday in January 1969, or until their successors are elected and qualified. In the event that a vacancy occurs prior to the first Monday in January 1969, or thereafter, the vacancy shall be filled as is now provided by the charter of the City of Rome (Ga. L. 1943, pp. 1559-1560)."

Section 2. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 3. The affidavit and notice hereto attached is made a part of this bill, and reference is made thereto.

Notice of Local Legislation.

To the Citizens of Rome, Floyd County, Georgia:

In the General Assembly of Georgia for the year 1966, bills will be introduced to amend the charter of the City of Rome in the following particulars:

1. To reduce the number of wards in the City of Rome from nine (9) to three (3) wards. The first ward to be that portion of the city lying between the center line of Etowah River and the center line of the Oostanaula River; the second ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Coosa River; and the third ward to be that portion of the city lying between the center line of the Coosa River and the center line of Oostanaula River.

2. To provide that each ward of the City of Rome shall have three (3) members of the Rome city commission and that the election of said commission shall be on a staggered basis and after the first election, each commissioner shall be elected for a four (4) year term.

3. To change the composition of the Rome board of education from five (5) members to six (6) members and pro-

vide that they shall be elected for staggered terms with two (2) members to be elected from each of the three wards of the City of Rome.

4. To provide that a person running for election to the Rome city commission in the general election must have been nominated by a political party in a primary held by said political party by means of a primary election, to be placed on the ballot for the general election for the Rome city commission shall have been nominated by petition signed by at least 10% of the total number of electors eligible to vote in the last general election for the Rome city commission.

5. To provide that by ordinance, the city may regulate elections in any manner not in conflict with the Constitution or the laws of the United States or the State of Georgia.

6. To provide that a citizen of Rome who has registered to vote may vote whether or not said citizen has paid all taxes, fines, forfeitures or other indebtedness due said city.

This 13th day of December, 1965.

Mrs. Ray Beard
Secretary, Rome City
Commission.

Georgia, Floyd County.

Personally appeared before the undersigned official authority to administer oaths, Sidney Lowrey, who, on oath states that he is a member of the General Assembly from Floyd County, and is the author of the local bill to which this affidavit is attached; and that a notice of the intention to apply for the legislation outlined in said bill has been published in the Rome News Tribune, a newspaper in which the sheriff's advertisements for the locality affected by said bill, are published, once a week for three

weeks during a period of sixty days immediately preceding its introduction into the General Assembly; and that the copy of said notice as published in said paper is hereto attached and made a part of said bill; and that said notice was published as provided by law.

This 2nd day of February, 1966.

/s/ Sidney Lowrey

Sworn to and subscribed before me,
this 2nd day of February, 1966.

/s/ Amelia Smith,
Notary Public, Georgia, State at Large.
My Commission expires Oct. 5, 1968.
(Seal).

Approved February 28, 1966.

CITY OF ROME—CITY COMMISSIONERS, ELECTION, SALARIES, ETC.

No. 127 (House Bill No. 546).

An Act to amend section 3, as amended, of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885) creating a new charter and municipal government of the City of Rome, be amended by striking said section 3 and its amendments in their entirety and substituting a new section 3 thereof; to provide the qualifications of the members of the Rome city commissioners; to provide the salary of said commissioners; to provide for the organization of said commission; to provide that each of the three wards of the City of Rome shall elect three city commissioners; to provide that each ward shall have elective post for said commissioner to be designated as post no. 1, post no. 2, and post no. 3;

to provide that a candidate for the city commission shall designate which post of a ward he is standing for election; to repeal all laws in conflict therewith; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same:

Section 1. That section 3, as amended, of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885), creating a new charter and municipal government for the City of Rome, be and the same is hereby repealed in its entirety by substituting in lieu thereof a new section 3 reading as follows:

"Section 3. Be it further enacted by the authority aforesaid, that the governing and legislative authority of said city shall be vested in a commission of nine members. The members of said commission shall have attained the age of twenty-one (21) years, and shall have been residents and citizens of said city for at least two years next preceding their election, and shall be qualified voters and electors of the City of Rome and must also at the time of their qualification for election as a city commissioner have been a registered voter and elector of the City of Rome at least ninety (90) days prior to their qualification. The members of said commission at the time of and during their continuance in office shall be bona fide residents and citizens of said City of Rome and the Ward from which they are elected. Each member of said commission shall receive a salary of fifteen hundred ($1,500.00) dollars per annum. At their first meeting, or as soon thereafter as possible, the members of said commission shall elect one of their number as chairman, who shall receive an additional salary of six hundred ($600.00) dollars per annum. The chairman, or in his absence, the chairman pro tempore, shall preside over the deliberations of the commission and shall have the

right to vote on all questions; he shall preserve order and decorum at all meetings of the commission and shall enforce the rules of that body; and shall have power to punish all persons for contempt of such rules; and shall perform all other duties incident to his office. Service of legal process directed to or against the city shall be served upon the chairman of the commission. Three of said commissioners from each Ward of the city shall be elected by a majority of the consolidated vote of the entire city. Each of the three Wards of the City of Rome shall have three (3) elective posts for the election of said commissioners. Each elective post shall be designated as post no. 1, post no. 2, or post no. 3. Any person offering himself as a candidate for election as a city commissioner shall specifically designate and qualify in the ward in which he is domiciled as being a candidate for post no. 1, post no. 2, or post no. 3 of his ward."

Section 2. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 3. The affidavit and notice hereto attached is made a part of this bill, and reference is made thereto.
Georgia, Floyd County.

Personally appeared before the undersigned official authorized to administer oaths, Sidney Lowrey, who, on oath states that he is a member of the General Assembly from Floyd County, and is the author of the local bill to which this affidavit is attached; and that a notice of the intention to apply for the legislation outlined in said bill has been published in the Rome News Tribune, a newspaper in which the sheriff's advertisements for the locality affected by said bill are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly; and that the copy of said notice as published in said paper is hereto attached and

made a part of said bill; and that said notice was published as provided by law.

This 2nd day of February, 1966.

/s/ Sidney Lowrey

Sworn to and subscribed before me,
this 2nd day of February, 1966.

/s/ Amelia Smith,
Notary Public, Georgia, State at Large.
My Commission expires Oct. 5, 1968.
(Seal).

Notice of Local Legislation.

To the Citizens of Rome, Floyd County, Georgia:

In the General Assembly of Georgia for the year 1966, bill will be introduced to amend the charter of the City of Rome in the following particulars:

1. To reduce the number of wards in the City of Rome from nine (9) to three (3) wards. The first ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Oostanaula River; the second ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Coosa River; and the third Ward to be that portion of the city lying between the center line of the Coosa River and the center line of the Oostanaula River.

2. To provide that each ward of the City of Rome shall have three (3) members of the Rome city commission and that the election of said commission shall be on a staggered basis and after the first election, each commissioner shall be elected for a four (4) year term.

3. To change the composition of the Rome board of education from five (5) members to six (6) members and provide that they shall be elected for staggered terms with

two (2) members to be elected from each of the three wards of the City of Rome.

4. To provide that a person running for election to the Rome City Commission in the general election must have been nominated by a political party in a primary held by said political party, or that any person's name not nominated by a political party by means of a primary election, to be placed on the ballot for the general election for the Rome city commission shall have been nominated by petition signed by at least 10% of the total number of electors eligible to vote in the last general election for the Rome city commission.

5. To provide that by ordinance, the city may regulate elections in any manner not in conflict with the Constitution or the laws of the United States or the State of Georgia.

6. To provide that a citizen of Rome who has registered to vote may vote whether or not said citizen has paid all taxes, fines, forfeitures or other indebtedness due said city.

This 13th day of December, 1965.

/s/ Mrs. Ray Beard
Secretary, Rome City
Commission

Approved February 28, 1966.

CITY OF ROME—BOARD OF EDUCATION.

No. 255 (House Bill No. 545).

An Act to amend section 84 of the Act approved August 19, 1918 (Ga. L. 1918, pp. 813-885) creating a new charter and municipal government for the City of Rome, by repealing section 84 in its entirety and substituting in lieu thereof a new section 84 (a) (b) (c) (d) (e) (f)

and (g); to provide that the board of education of the City of Rome shall be composed of six (6) members; that each ward of the City of Rome shall elect two (2) members to said board; to provide the qualifications of the candidate for the board of education; to provide that there shall be a post no. 1 and post no. 2 from each ward for the board of education; to provide that the board of education shall be elected by a majority of the consolidated votes of the City of Rome; to provide for a run-off election for the board of education; to provide the present and future terms of the board of education; to provide for the election dates of the board of education; to repeal all laws in conflict therewith; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same:

Section 1. That section 84 of the Act approved August 19, 1918 (Ga. L. 1918, pp. 813-885) creating a new charter and municipal government for the City of Rome, be and the same is hereby repealed in its entirety and substituting in lieu thereof a new section 84 (a) (b) (c) (d) (e) (f) and (g), reading as follows:

"Section 84 (a). Be it enacted by the authority aforesaid, that a board of education to consist of six (6) members, be, and the same is hereby established and that each of the three wards of said city shall have two members of the board of education. The members of said board at the time of and during their continuance in office, shall be bona fide residents and citizens of said City of Rome and the ward from which they are elected, and must also at the time of their qualification for election have been a registered voter and elector of the City of Rome at least ninety (90) days prior to their qualification for election. Vacancy or vacancies in said board of education caused by death, resignation,

removal, disqualification, or otherwise, shall be filled by a majority vote of the remaining members of said board.

(b). Be it further enacted by authority aforesaid, that for the purpose of the election of the members of the board of education, each ward of the City of Rome shall be divided for said election into post no. 1 and post no. 2. A candidate for election shall qualify and be a candidate for either post no. 1 or post no. 2, as designated by said candidate upon his qualification as a candidate.

(c). Be it further enacted by authority aforesaid, that the election of all the members of the board of education of the City of Rome shall be by a majority of the consolidated votes of the entire city.

(d). Be it further enacted by authority aforesaid, that if a candidate for the board of education does not receive a majority of all the consolidated votes of the entire city cast in said election for the post for which he qualified as a candidate, a run-off election shall be held between the two candidates receiving the largest or greatest number of votes within fifteen (15) days after the regular election.

(e). Be it further enacted by authority aforesaid, that the present board of education of said city shall continue in office until the first Monday in April 1967, or until their successors are elected and qualified. That on the first Tuesday in March 1967, an election shall be held to elect the members of the board of education. The candidate elected for post no. 1 of each ward of the City of Rome shall serve from the first Monday in April 1967 until the first Monday in January 1973, or until their successors are elected and qualified. The candidate elected for post no. 2 of each ward of the City of Rome shall serve from the first Monday in April 1967 until the first Monday in January 1971, or until their successors are elected and qualified.

(f). Be it further enacted by authority aforesaid, that after the initial election on the first Tuesday in March

1967, at the termination of the then elected board members' terms, as hereinbefore set forth, the members of the board shall be elected for terms of four years thereafter, or until their successors are duly elected and qualified. Said subsequent elections to be held on the first Tuesday in December of each year and said board members shall serve and hold office for a term of four years from the first Monday in January or the year they assume office.

(g). Provided, however, notwithstanding any other provision of the charter of the City of Rome, a candidate for the board of education may have his name placed on the ballot for the general election to be held on the first Tuesday in March, 1967 for the election of the board of education without having been nominated in a primary election or having been nominated by a nomination petition. However, any candidate desiring to stand for such election shall register and qualify with the secretary of the Rome city commission at least 30 days prior to the election. A majority of the consolidated votes cast in the entire city in said election shall be necessary for election."

Section 2. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 3. The affidavit and notice hereto attached is made a part of this bill, and reference is made thereto.

Notice of Local Legislation.

In the General Assembly of Georgia for the year 1966, bills will be introduced to amend the charter of the City of Rome in the following particulars:

1. To reduce the number of wards in the City of Rome from nine (9) to three (3) wards. The first ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Oostanaula River; the second ward to be that portion of the city lying between the center line of the Etowah River and the center line of

the Coosa River; and the third ward to be that portion of the city lying between the center line of the Coosa River and the center line of the Oostanaula River.

2. To provide that each ward of the City of Rome shall have three (3) members of the Rome city commission and that the election of said commission shall be on a staggered basis and after the first election, each commissioner, shall be elected for a four (4) year term.

3. To change the composition of the Rome board of education from five (5) members to six (6) members and provide that they shall be elected for staggered terms with two (2) members to be elected from each of the three wards of the City of Rome.

4. To provide that a person running for election to the Rome city commission in the general election must have been nominated by a politcal party in a primary held by said political party by means of a primary election, to be placed on the ballot for the general election for the Rome city commission shall have been nominated by petition signed by at least 10% of the total number of electors elgible to vote in the last general election for the Rome city commission.

5. To provide that by ordinance, the city may regulate elections in any manner not in conflict with the Constitution or the laws of the United States or the State of Georgia.

6. To provide that a citizen of Rome who has registered to vote may vote whether or not said citizen has paid all taxes, fines, forfeitures or other indebtedness due said city.

This 13th day of December, 1965.

Mrs. Ray Beard
Secretary,
Rome City Commission

Georgia, Floyd County.

Personally appeared before the undersigned official authorized to administer oaths, Sidney Lowrey, who, on oath, states that he is a member of the General Assembly from Floyd County, and is the author of the local bill to which this affidavit is attached; and that a notice of the intention to apply for the legislation outlined in said bill has been published in the Rome News Tribune, a newspaper in which the sheriff's advertisements for the locality affected by said bill are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly; and that the copy of said notice as published in said paper is hereto attached and made a part of said bill; and that said notice was published as provided by law.

This 2nd day of February, 1966.

/s/ Sidney Lowrey

Sworn to and subscribed before me,
this 2nd day of February, 1966.

/s/ Amelia Smith,
Notary Public, Georgia, State at Large.
My Commission expires Oct. 5, 1968.
(Seal).

Approved March 2, 1966.

CITY OF ROME—ELECTIONS.

No. 350 (House Bill No. 550).

An Act to amend section 16 of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885) creating a new charter and municipal government for the City of Rome, by striking section 16 in its entirety and substituting in lieu thereof a new section 16 (a) (b) (c) (d) (e) and (f); to provide for primary elections and the nomination of candidates for any general election and special election by primary or nomination petition; to provide for the form of said nomination petition and the number of signatures (10%) necessary for nomination; to provide for the qualifications of the electors signing nomination petition; to provide the time period for the circulation of said nomination petition and its being filed with the secretary of the Rome City Commission; to provide for the certification of a nominee of political party or organization to the secretary of the Rome City Commission; to provide for the closing of the voting registration prior to any election; to provide that by ordinance the Rome City Commission may regulate and control both primary and general elections in any manner not in conflict with the Constitution and the laws of the United States and the State of Georgia; to repeal all laws in conflict therewith; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same:

Section 1. That section 16 of the Act approved August 19, 1918 (Ga. L. 1918, p. 813-885) creating a new charter and municipal government for the City of Rome, be and the same is hereby repealed in its entirety and substituting in lieu thereof a new section 16 (a) (b) (c) (d) (e) and (f), reading as follows:

"Section 16 (a). Be it further enacted by the authority aforesaid, That any party or political organization may hold a primary election for the nomination of candidates, or the expression of party policy, for any general or special election, provided such primary shall be held in accordance with the laws of the State and of this charter for general elections.

(b) Provided, however, that notwithstanding any other provision of the charter of the City of Rome for a person to be certified by a party or political organization as a

candidate for any elective office of the City of Rome, the person so certified must have received a majority of the votes cast in a primary election held by said party or political organization. In addition to the party nominations made at primaries, nominations of candidates for public office of the City of Rome may also be made by nomination petition signed by electors and filed in the manner hereinafter provided. Such petition shall be in the form prescribed by the secretary of the Rome City Commission with whom they shall be filed and no other form than the one so prescribed shall be used for such purposes. Said nomination petition shall be submitted to and filed with the Secretary of the Rome City Commission at least thirty (30) days prior to the election.

(c) A nominating petition of a candidate shall be signed by a number of electors of not less than fifteen per centum of the total number of electors eligible to vote in the last general election for the filling of the office the candidate is seeking.

(d) Each person signing a nomination petition shall declare therein that he is a duly qualified and registered elector and voter of the City of Rome entitled to vote in the next general election for a filling of the office sought by the candidate supported by the petition, and shall add to his signature his residence address. No person shall sign the same petition more than once. Each petition shall support the candidacy of only a single candidate. No nomination petition shall be circulated prior to 120 days before the last day on which such may be filed and no signature shall be counted unless it was signed within 120 days of the last day for filing the same. A nominating petition shall not be amended or supplemented after its presentation with the appropriate office for filing.

(e) Provided further, if a candidate for any elective office of the City of Rome is nominated by a political party or organization in a primary election held for such purpose,

the chairman or governing body of such political party or organization shall certify to the secretary of the Rome City Commission, in writing, the names of the elected nominee or nominees of such political party at least 30 days prior to the general election in which said nominee or nominees shall be candidates for an elective office of the City of Rome.

Fifteen (15) days prior to a general election, the registration of voters for the purpose of voting in said general election shall be closed and the secretary of the Rome City Commission shall furnish the managers of elections a complete list of voters as provided in Ga. Laws 1918, pp. 813-885, Sec. 7.

(f) Be it further enacted by the authority aforesaid, that the Rome City Commission may by ordinance regulate and control both primary and general elections in any manner not in conflict with the Constitution and laws of the United States and the State of Georgia."

Section 2. All laws or parts of laws in conflict with this Act are hereby repealed.

Section 3. The affidavit and notice hereto attached is made a part of this bill, and reference is made thereto.

Notice of Local Legislation.

In the General Assembly of Georgia for the year 1966, bills will be introduced to amend the charter of the City of Rome in the following particulars:

1. To reduce the number of wards in the City of Rome from nine (9) to three (3) wards. The first ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Oostanaula River; the second ward to be that portion of the city lying between the center line of the Etowah River and the center line of the Coosa River; and the third ward to be that portion of the city lying between the center line of the Coosa River and the center line of the Oostanaula River.

2. To provide that each ward of the City of Rome shall have three (3) members of the Rome City Commission and that the election of said commission shall be on a staggered basis and after the first election, each commissioner shall be elected for a four (4) year term.

3. To change the composition of the Rome Board of Education from five (5) members to six (6) members and provide that they shall be elected for staggered terms with two (2) members to be elected from each of the three wards of the City of Rome.

4. To provide that a person running for election to the Rome City Commission in the general election must have been nominated by a political party in a primary held by said political party by means of a primary election, to be placed on the ballot for the general election for the Rome City Commission shall have been nominated by petition signed by at least 10% of the total number of electors eligible to vote in the last general election for the Rome City Commission.

5. To provide that by ordinance, the city may regulate elections in any manner not in conflict with the Constitution or the laws of the United States or the State of Georgia.

6. To provide that a citizen of Rome who has registered to vote may vote whether or not said citizen has paid all taxes, fines, forfeitures or other indebtedness due said city.

This 13th day of December, 1965.

Mrs. Ray Beard
Secretary,
Rome City Commission

Georgia, Floyd County.

Personally appeared before the undersigned official authorized to administer oaths, Sidney Lowrey, who, on oath states that he is a member of the General Assembly from

Floyd County, and is the author of the local bill to which this affidavit is attached; and that a notice of the intention to apply for the legislation outlined in said bill has been published in the Rome News Tribune, a newspaper in which the sheriff's advertisements for the locality affected by said bill are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly; and that the copy of said notice as published in said paper is hereto attached and made a part of said bill; and that said notice was published as provided by law.

This 2nd day of February, 1966.

/s/ Sidney Lowrey

Sworn to and subscribed before me,
this 2nd day of February, 1966.

/s/ Amelia Smith,
Notary Public, Georgia State at Large.
My Commission expires Oct. 5, 1968.
(Seal).

Approved March 4, 1966.

CITY OF ROME—ELECTIONS.

No. 579 (House Bill No. 95).

An Act to amend the charter of the City of Rome, Georgia as passed by the General Assembly of Georgia and approved August 19, 1918 (Ga. L. 1918, pp. 813-885), by amending an Act amending said charter as approved February 28, 1966 (Ga. L. 1966, pp. 2375-2378) by striking the year "1965" as it appears in line 5, page 2376 of said 1966 Georgia Laws, and substituting therefor the

year "1968"; to repeal all laws in conflict therewith; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same:

Section 1. That the subsection designated as section 4(b) of an amendment to the charter of the City of Rome (Ga. L. 1918, pp. 813-885) as passed by the General Assembly of Georgia and approved February 28, 1966 (Ga. L. 1966, pp. 2375-2378) be and the same is hereby amended by striking the year "1965" as it appears in line 5, page 2376 of said amendment of 1966 and substituting therefor the year "1968" so that subsection (b) of section 4 of said 1966 amendment shall read as follows:

"Section 4. (b) Be it further enacted by the authority aforesaid, that the elected candidate from post No. 1 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December 1968, to serve and hold office from the first Monday in January 1969 until the first Monday in January 1975. The elected candidate from post no. 2 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December 1968, to serve and hold office from the first Monday in January 1969 until the first Monday in January 1973. The elected candidate from post no. 3 of each of the three wards of the City of Rome shall be elected on the first Tuesday in December, 1968, to serve and hold office from the first Monday in January, 1969 until the first Monday in January, 1971."

Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

Section 3. The affidavit and notice hereto attached is made a part of this bill, and reference is made thereto.

Georgia, Floyd County.

Personally appeared before the undersigned official authorized to administer oaths, Richard L. Starnes, Jr., who,

on oath states that he is a member of the General Assembly from Floyd County, and is the author of the local bill to which this affidavit is attached; and that a notice of the intention to apply for the legislation outlined in said Bill has been published in the Rome News Tribune, a newspaper in which the Sheriff's advertisements for the locality affected by said Bill are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly; and that the copy of said notice as published in said paper is hereto attached and made a part of said Bill; and that said notice was published as provided by law.

This 18th day of January, 1967.

/s/ Richard L. Starnes, Jr.
by June Slover
Witness
Carolyn H. Norris
Jerry L. Minge

Sworn to and subscribed before me,
this 18th day of January, 1967.

/s/ Jerry L. Minge
Notary Public, Floyd County, Ga.
My Commission Expires August 7, 1967.

Notice of Local Legislation.

To the Citizens of Rome, Floyd County, Georgia:

In the General Assembly of Georgia for the year 1967, a bill will be introduced to amend the charter of the City of Rome in the following particulars:

To amend the amendment of the charter of the City of Rome approved February 28, 1966, as set forth in Georgia Laws 1966, pp. 2375-2378, by correcting a typogaphical error appearing in line 5, page 2376, said Georgia Laws, by deleting the year "1965" appearing therein and substi-

tuting therefor the year "1968". Said correction shall provide that the city commissioners of post 2 of each ward shall be next elected on the first Tuesday in December of 1968 rather than on the first Tuesday in December, 1965.

City of Rome

By: /s/ Mrs. Ray Beard
Secretary, Rome
City Commission

Approved April 21, 1967.

CITY OF ROME—ELECTIONS.

No. 979 (House Bill No. 1450).

An Act to amend an Act approved August 19, 1918 (Ga. L. 1918, pp. 813-885), creating a new charter and municipal government for the City of Rome, as amended, and especially to amend section 1 of an Act approved February 28, 1966 (Ga. L. 1966, p. 2375), providing for election of commissioners on a staggered basis, so as to provide that the city general elections be held on the Tuesday next following the first Monday in November in the year next preceding the expiration of the term; to provide that a run-off election be governed by the Georgia Municipal Election Code; to repeal conflicting provisions; and for other purposes.

Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same:

Section 1. That subsection 4(c) of an Act approved August 19, 1918 (Ga. L. 1918, pp. 813-885), as amended by an Act approved February 28, 1966 (Ga. L. 1966, pp. 2375, 2378), providing for election of commissioners and fixing their terms, be, and the same is hereby, amended by striking subsection 4(c) in its entitrety and substituting in lieu thereof a new subsection 4(c) to read as follows:

Runoff elections.

"(c) Be it further enacted by the authority aforesaid, that if a candidate for the Rome City Commission does not receive a majority of all the consolidated votes of the entire city cast in said election for the post for which he qualified as a candidate, a run-off election shall be held between the two candidates receiving the highest number of votes. Such run-off shall be held as prescribed by the Georgia Municipal Election Code."

Section 2. That subsection 4(d) of an Act approved August 19, 1918 (Ga. L. 1918, pp. 813-885), as amended by an Act approved February 28, 1966 (Ga. L. 1966, pp. 2375-2378) providing for election of commissioners and fixing their terms, be, and the same is hereby, amended by striking subsection 4(d) in its entirety and substituting in lieu thereof a new subsection 4(d) to read as follows:

Terms of commissioners.

"(d) Be it further enacted by the authority aforesaid, that at the termination of the terms of the commissioners elected on the first Tuesday in December 1968, as hereinbefore set forth, commissioners of the city shall be elected for terms of four (4) years thereafter, or until their successors are duly elected and qualified. Said subsequent elections shall be held on the Tuesday next following the first Monday in November in the year next preceding the expiration of the term, and said commissioners shall serve and hold office for a term of four (4) years from the first Monday in January of the year they assume office."

Section 3. That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed.

Section 4. That the published notice and accompanying affidavit attached hereto be and the same are hereby, by reference, made a part of this Bill.

Notice of Intention to Introduce Local Legislation.

Pursuant to Article III, Section 7, Paragraph 15, of the Constitution of Georgia of 1945, notice is hereby given that during the 1970 session of the Georgia General Assembly, a bill will be introduced to amend Georgia laws 1918, Act No. 522; Georgia Laws 1966, Act. No. 125; Georgia Laws 1967, Act. No. 579 (Section 5 of the Charter of the City of Rome) to provide that runoff elections be governed by the Georgia Municipal Election Code; to provide that the City general elections be held on the Tuesday next following the first Monday in November in the year next preceding the expiration of the term; to repeal conflicting provisions; and for other purposes.

Sam W. Doss, Jr.
Senator, 52nd District

Sidney Lowrey
Representative,
9th District, Post 1

Charles Graves
Representative,
9th District, Post 2

E. B. Toles
Representative,
9th District, Post 3

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Charles Graves who, on oath, deposes and says that he is Representative from the 9th District, and that the attached copy of notice of intention to introduce local legislation was published in

the Rome News-Tribune which is the official organ of Floyd County, on the following dates: January 15, 21, 28, 1970.

/s/ Charles Graves
Representative,
9th District

Sworn to and subscribed before me,
this 3rd day of February, 1970.

/s/ Gail Morris,
Notary Public, Georgia, State at Large.
My Commission Expires Dec. 22, 1973.
(Seal).

Approved March 12, 1970.

CITY OF ROME—CHARTER AMENDED.

No. 671 (House Bill No. 1025).

An Act to amend an Act creating a new charter and municipal government for the City of Rome, approved August 19, 1918 (Ga. L. 1918, p. 813), as amended, particularly by an Act approved March 2, 1966 (Ga. L. 1966, p. 2815), so as to provide that the election for members of the City Board of Education be held on the Tuesday next following the first Monday in November in the year next preceding the expiration of the term; to provide that a run-off election be governed by the Georgia Municipal Election Code; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act creating a new charter and municipal government for the City of Rome, approved August 19, 1918 (Ga. L. 1918, p. 813), as amended, particularly by an Act approved March 2, 1966 (Ga. L. 1966, p. 2815), is hereby amended by striking subsection (d) of section 84 in its

entirety and substituting in lieu thereof a new subsection (d), to read as follows:

"(d) If a candidate for the Board of Education does not receive a majority of all the consolidated votes of the entire city cast in said election for the post for which he qualified as a candidate, a run-off election shall be held between the two candidates receiving the highest number of votes. Such run-off shall be held in accordance with the Georgia Municipal Election Code."

Section 2. Said Act is further amended by striking subsection (f) of section 84 in its entirety and by inserting in lieu thereof a new subsection (f), to read as follows:

"(f) Be it further enacted by the authority aforesaid that after the election on the first Tuesday in March, 1967, at the termination of the then elected Board members' terms, as hereinbefore set forth, the members of the Board shall be elected for terms of four (4) years, or until their successors are duly elected and qualified. All such elections, subsequent to the election held on the first Tuesday in December, 1970, shall be held on Tuesday next following the first Monday in November in the year next preceding the expiration of the term, and said Board members shall serve and hold office for a term of four (4) years from the first Monday in January of the year they assume office."

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

Notice of Intention to Introduce Local Legislation.

Pursuant to Article III, section 7, Paragraph 15, of the Constitution of Georgia of 1945, notice is hereby given that during the 1971 session of the Georgia General Assembly, a bill will be introduced to amend Georgia Laws 1918, Act No. 522, section 84, and Ga. L. 1966, Act No. 255, section 1 (section 145 of the Charter of the City of Rome) to provide that runoff elections for the city Board of Education be governed by the Georgia Municipal Election Code; to provide that the elections for City Board of Education be held on the Tuesday next following the first Monday in November in the year next preceding the expiration of the term; to repeal conflicting provisions; and for other purposes.

Sam W. Doss, Jr.
Senator,
52nd District

Sidney Lowrey
Representative,
9th District, Post 1

John Adams
Representative,
9th District, Post 2

E. B. Toles
Representative,
9th District, Post 3

Georgia, Fulton County.

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, John Adams who, on oath, deposes and says that he is Representative from the 9th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Rome News-Tribune which is the official organ of Floyd County, on the following dates: January 21, 28 and February 4, 1971.

/s/ John Adams
Representative,
9th District

Sworn to and subscribed before me,
this 4th day of March, 1971.

/s/ Genevieve McKinney,
Notary Public, Georgia State at Large.
My Commission Expires Dec. 16, 1974.
(Seal).

Approved April 10, 1971.

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION FILE No. 77-0797

CITY OF ROME, BRUCE HAMLER, and H. F. HUNTER, JR.,
Plaintiffs,

v.

UNITED STATES OF AMERICA, GRIFFIN B. BELL, Attorney General of the United States, and DREW S. DAYS III, Assistant Attorney General of the United States,
Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

RECEIVED MAY 2, 1979

Notice is hereby given that City of Rome, Bruce Hamler, and H. F. Hunter, Jr., the Plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the final order granting Defendants' motion to dismiss Count V of Plaintiffs' Amended Complaint and dismissing Count V of Plaintiffs' Amended Complaint, rendered in this action on February 21, 1978 and entered on February 22, 1978, and from the final order denying Plaintiffs' Motion for Summary Judgment and granting that of Defendants on Counts I, II, III, IV, and VI of Plaintiffs' Amended Complaint and dismissing Plaintiffs' case, rendered in this action on April 3, 1979 and entered April 4, 1979.

This appeal is taken pursuant to 42 U.S.C. § 1973b and 42 U.S.C. § 1973c.

This 2 day of May, 1979.

/s/ Robert M. Brinson
Robert M. Brinson

/s/ William E. Sumner
William E. Sumner

/s/ Joseph W. Dorn
Joseph W. Dorn

Brinson, Askew & Berry
Post Office Box 5513
Rome, Georgia 30161
(404) 291-8853

Long, Aldridge, Heiner,
Stevens & Sumner
1900 Rhodes-Haverty Building
Atlanta, Georgia 30303
(404) 681-3000

Kilpatrick, Cody, Rogers,
McClatchey & Regenstein
2033 K Street, N.W.
Suite 400
Washington, D.C. 20006
(202) 833-3620